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THE SYNDICATION OF THE SPEAKERSHIP

ON March 19, 1910, closed one of the fiercest parliamentary battles in the history of Congress. A ruling of the speaker, sound in logic and warranted by precedent, was reversed; the speaker was removed from the position of vantage on the Rules Committee which the occupant of the chair had held for fifty-two years; the number of the committee was increased to ten; and the selection of this powerful directing group was taken from the speaker and vested in the House of Representatives.

In attempting to see clearly what happened at that time, and why it happened, and to estimate its political significance, the student should keep himself free, as far as possible, from the partisan spirit that characterized much of the contemporary discussion of the rules of the House of Representatives. And nothing can be more conducive to such a judicial attitude than a review (which must necessarily be brief) of the development that culminated in the historic fight of March, 1910—a fight that began, not inappropriately, on St. Patrick's Day.

The Committee on Rules

During the first ninety years of our legislative history, the Committee on Rules[1] was a select committee of the House of Representatives, and throughout most of this period it was far from being preëminent in influence among the committees of

[1] The historical development of the Committee on Rules will be treated at length in a dissertation in course of preparation by C. R. Atkinson under the Faculty of Political Science of Columbia University.

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the House. It was customary, during this period, to empower the speaker at the beginning of each Congress to appoint a committee, varying in number from five to nine, to whom the rules of the House should be referred for revision and amendment. Occasional modifications of this practice were due to unusual situations in the House and cannot be considered departures from the spirit of the precedents established in the first three Congresses. The reports of the Committee on Rules, during the first half-century of our national life under the Constitution, were not, as in later years, the occasions of dramatic debates. They were not privileged in any way, nor were they the instruments of party dominance. Even the two-thirds vote required for the adoption of its reports remained in effect until the Twenty-seventh Congress, when the principle of adoption by majority vote was established through a ruling by Speaker White.[1]

At length, however, unsystematic growth in the rules and practices of the House called loudly for an efficient body of men to undertake the work of reforming the methods of doing business. It was in the hope of meeting a condition bordering on chaos that the leaders of the House provided, in a resolution adopted June 16, 1841, that the Committee on Rules thereby appointed "shall have the right to report at all times."[2] Though this action failed of its immediate purpose, it set the precedent for the enactment of a rule that later became a most important instrument for the assertion and maintenance of the committee's power. The adoption of the hour rule by the same Congress, after twenty years of agitation for limiting debate, also pointed in the direction of that curtailment of individual action in the House which was later to become such a marked function of the Committee on Rules.

The failure of "the right to report at all times" to make the Committee on Rules an instrument for bringing about desired reforms led to the establishment of another important precedent, December 5, 1853, in the adoption of the following resolution:

[1] First Session, 27th Congress, *Globe*, vol. 10, p. 73.

[2] First Session, 27th Congress, *Journal*, pp. 138–144.

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Resolved, That the rules of the last House of Representatives be adopted as the rules of this House until otherwise ordered; Provided, however, That there shall be appointed a committee of five members to revise said rules, which committee shall have the power to report at any time, and their report shall be acted upon by the House until disposed of, to the exclusion of all other business, anything in the rules hereby temporarily adopted to the contrary notwithstanding.[1]

Of the strong parliamentary position thus attained the Committee on Rules of the Thirty-third Congress did not take advantage. It held but one meeting during the first four months of its existence and made but two reports during this Congress.

There was no further increase in the powers of the Committee on Rules, nor any marked increase in its influence, until in 1858 the speaker became one of its members.

In view of the significance which came to be attached to the speaker's membership in the committee and the difficulty experienced in displacing him, it is advisable to examine carefully the circumstances attending his appointment in the Thirty-fifth Congress.

The speaker in committee

The early proceedings of this Congress gave no indication that a change in our system of government was to be inaugurated. The records show that for three months Congress neglected to appoint a Committee on Rules, and that, when this oversight was called to its attention, it declined to trouble itself with the matter for another three months. At last, however, on June 14, 1858, late in the afternoon, Mr. Winslow secured the floor and said: "I ask unanimous consent of the House to introduce the following resolution to which I presume there will be no opposition":

Resolved; That a committee be appointed, consisting of the Speaker and four members, to be named by him, whose duty it shall be to digest the rules of order, to suggest such alterations and amendments as they may deem advisable, and to report the same back to the House for its action at an early day in the next session.

[1] First Session, 33rd Congress, *Globe*, vol. 28, part 1, p. 4.

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There being no opposition the resolution was received. The debate then proceeded as follows:

Mr. Clemens. I move to amend by striking out that provision which provides that the members of the committee shall be named by the Speaker and insert "by the vote of the House."

Mr. Winslow. That amendment is not in order.

The Speaker. The Chair hopes the gentleman will be indulged in offering the amendment.

Mr. Letcher. Is it contemplated that the committee shall sit during the recess?

Mr. Winslow. Certainly not. They are to report at an early day the next session. They will not require to be long in session.

Mr. Phillips. I hope the gentleman will modify his resolution so as to allow the committee to meet such committee as may be appointed by the Senate for the purpose of revising the joint rules.

Mr. Winslow. I have no objection to that as an addition to my resolution.

The question being on Mr. Clemens's amendment, Mr. Clemens demanded tellers. The House divided; and the tellers reported: aye 1, noes 130. So the amendment was rejected. The resolution was then adopted.[1]

The above verbatim account of the speaker's entrance into the Committee on Rules presents a striking contrast to the record of the proceedings connected with his exit fifty-two years later. It may be interesting to note, further, that the speaker of the Thirty-fifth Congress, Mr. James L. Orr of South Carolina, the member who introduced the resolution, Mr. Winslow, and the member who made the solitary objection, Mr. Clemens, were all Democrats.[2]

The only inferences that can fairly be drawn from the action taken at this time are that the House felt that the speaker's parliamentary experience would be valuable in the work of the committee and that such help was needed. That his presence did serve to stimulate the committee is evident from the activity displayed by it in this and the succeeding Congresses.

The next Congress brought about, in 1860, the expected re-

[1] First Session, 35th Congress, *Globe*, part 3, p. 3048. [2] *Ibid.* part 1, p. 2.

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vision of the rules, adopting a code which remained practically unchanged until the revision of 1880. The resolution creating the Committee on Rules which drafted the revision of 1860 embodied the principles developed in the Twenty-seventh, Thirty-third and Thirty-fifth Congresses. The Committee on Rules was to consist of the speaker and four members named by him; it was given leave to report at any time; and the report when made was to be considered as a special order.[1]

Thus by 1860 the Committee on Rules had received the form which it retained until it was reconstructed by the revolutionary measure adopted on March 19, 1910. When, in 1880, it became a standing committee, no change was made in its composition.

It was not until 1891 that the committee became a really powerful engine for controlling the business of the House. The Reed rules of 1890 represented a natural reaction against the misuse of legitimate motions, designed for the protection of the minority. When the Democrats returned to power in the Fifty-second Congress they could not with good grace at once adopt the quorum-counting and anti-dilatory rules against which they had protested so bitterly; nor, on the other hand, could they afford to permit so brilliant and resourceful a leader as Mr. Reed to execute the program he had announced, namely, to justify by a course of filibustering the measures he had taken for the repression of the evil. Speaker Crisp, therefore, decided that it was necessary to give more power to the Committee on Rules. Since 1883 it had been the practice to make a special order by majority vote on a report from the Committee on Rules; but, since all sorts of dilatory motions could be applied to such a report, its adoption practically required unanimous consent. The increased power which Mr. Crisp clearly perceived to be necessary was given through an amendment to the rules providing that

> It shall always be in order to call up for consideration a report from the Committee on Rules, and pending the consideration the Speaker may entertain one motion that the House adjourn; but after the result

[1] First Session, 36th Congress, *Globe*, vol. 50, part 1, p. 655; *Journal*, p. 167.

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is announced, he shall not entertain any other dilatory motion until the said report shall have been duly disposed of.[1]

Later the Democrats restored the rule for counting a quorum, with immaterial modifications; and when the Republicans returned to power only formal opposition was offered to the adoption of the Reed rules in their entirety. The Republicans in turn accepted the privilege that Speaker Crisp and his party had bestowed upon the reports of the Committee on Rules; and the most powerful triumvirate[2] known to parliamentary history was launched upon its brilliant and interesting career.

The era of the special order

The period beginning with the speakership of Charles F. Crisp in the Fifty-second Congress may be termed, not inappropriately, the era of the special order. No change of any importance was made in the rules of the House from the restoration of the Reed rules in the Fifty-fourth Congress to the removal of Speaker Cannon from the committee in the Sixty-first. An examination of the practical operation of the special order, presented by the Committee on Rules, is therefore necessary to an understanding of the issue on which battle was joined in March, 1910.

When the first special order of importance was brought in by the Committee on Rules of the Fifty-second Congress, the ensuing proceedings were highly instructive to the members of the House. They learned for the first time the true meaning and force of the system which they had created.[3]

On Monday, March 7, 1892, after prayer by the chaplain, Mr. Catchings secured the floor to present a special order from the Committee on Rules:

Mr. Catchings. I desire to call up for consideration the report of the Committee on Rules, made last Monday, fixing March 22 for the con-

[1] First Session, 52d Congress, *Journal*, Appendix, p. 3.

[2] All the world knows that the two minority members were, as Mr. Champ Clark remarked, merely ornamental. *Cf. infra*, p. 406.

[3] First Session, 52d Congress, *Record*, vol. 23, part 2, pp. 1819–1832.

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sideration of what is known as the "free coinage bill"; and on that I demand the previous question.

The Speaker. The Clerk will read the report.

The clerk read as follows:

Resolved, That on Tuesday, the 22d day of March, immediately after the morning hour, the House proceed to the consideration of H. R. 4426, being a bill for the free coinage of gold and silver, for the issue of coin notes, and for other purposes, and should said bill be not sooner disposed of the House shall continue the consideration thereof, beginning each day immediately after the morning hour, during Wednesday, the 23rd, and Thursday, the 24th day of March.

Mr. Tracey (before the reading was concluded). I rise to a point of order.

Mr. Tracey was a Democrat from New York and had voted for the rule which was now operating.

The Speaker. The gentleman will state it.

Mr. Tracey. I think it would be in order to have the Journal read.

The Speaker. It is in order to call up this resolution. The rules provide that "it shall always be in order to call up for consideration a report from the Committee on Rules."

Mr. Tracey. Well, I wish to raise the question of consideration at the proper time upon this resolution.

The Speaker. The Clerk will finish the reading of the resolution.

Mr. Tracey. I only desire not to be ruled out.

The clerk resumed and concluded the reading of the resolution.

Mr. Tracey. Mr. Speaker, upon the consideration of this report of the Committee on Rules I wish to raise the question of consideration.

The Speaker. The Chair is of opinion—

Mr. Dingley. Before the question is raised I desire to ask whether the Chair has ruled that this report from the Committee on Rules can be considered by the House before the Journal has been read.

The Speaker. The Chair has so ruled.

Mr. Dingley. But the same provision covers a conference report; and does the Chair hold that a conference report could be presented before the reading of the Journal?

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The Speaker. The same provision does not cover a conference report.

Mr. Dingley. But the language is the same; the provision is that such a report may be presented at any time.

The Speaker. The gentleman is mistaken; there are express limitations as against a conference report. The language of the rule with reference to calling up a report from the Committee on Rules is the same as with reference to a motion to adjourn. . . .

Mr. Tracey appealed from the decision of the chair and in discussing his appeal said, in part:

I think, Mr. Speaker, it would be an unfortunate precedent to hold that the Committee on Rules, composed practically of three men, can come into this House of Representatives, where more than 300 men are assembled to represent the people of the United States, and can take upon themselves to bring in a rule to force the immediate consideration of any measure without giving an opportunity to members of the House to know what proceedings have been taken on the previous day. . . . I do not believe that members of this House, when they accepted these rules, had any such thought as that any proceedings could be taken in the House of Representatives without the reading of the Journal of the previous day's proceedings. . . . It would be my hope that the Chair, after hearing arguments that might be made in regard to the matter . . . would gladly reverse the ruling and allow us to proceed with the regular business of the House in the regular way, and not force upon the House an innovation which might be used in the most mischievous manner in times to come, and which would at once give to the Committee on Rules such power as was never claimed by the Committee on Rules of the Fifty-first Congress, a committee which was supposed to be very arbitrary, and which, when it took action and was supported by the Chair on questions not anything like as important as this, we felt ourselves bound to get up from our places on this floor and appeal, not always perhaps in an orderly manner, our anxieties at the idea of being trampled upon being so great that our disposition to keep calm under such circumstances sometimes was not possible. . . .[1]

Mr. Bland. What is the rule we are considering? It is a rule that was adopted in the Democratic caucus, and voted for by the House. Why? Because it was claimed it would have precisely the effect the

[1] First Session, 52d Congress, *Record*, vol. 23, part 2, pp. 1819, 1820.

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Speaker claims it will have. . . . Now, sir, if we should proceed to the reading of the Journal, with the temper the gentlemen from New York have shown upon this question, they could move to amend that Journal from now until next Christmas.[1]

After further discussion and submission of points of order, Mr. Catchings from the Committee on Rules again obtained the floor.

Mr. Catchings. I say that those gentlemen who expect to vote against the silver bill are, as I understand this most extraordinary proceeding today, lashing themselves into a most unwarrantable state of excitement because of the proposition presented here for the adoption of this report of the Committee on Rules. There is nothing contained in this resolution to deprive them of their rights or any right they may have under the rules. . . . Suppose this resolution or report of the Committee on Rules is adopted and the bill comes up for consideration at the time fixed, it is in order for my friend from Ohio [Mr. Harter] to move its postponement to December, if he choses to do so. When it does come up for consideration they will have every parliamentary right to interpose every parliamentary objection that they may see proper to resort to to defeat the measure entirely; so the adoption of this rule will not deprive them of any right they now possess. . . .

Mr. Raynor. Was not this rule of which the Speaker has given this construction . . . adopted for the sole purpose of stopping motions to adjourn, motions to fix a day, motions to take a recess; and was it not to permit the Committee on Rules to call up their report at any time, and then permit the House to make one motion to adjourn? Was there any intention, when you adopted this rule, to bring about any conflict with the rule which provides for the reading of the Journal every morning when the House meets?

Mr. Catchings. I will answer that question by saying that when that rule was adopted by this House it was adopted for the purpose of placing in the power of the Committee on Rules to call up for consideration by this House at any time it might choose to do so a report by that committee, and if the House does not wish to consider it, it is under no obligations to do so. The rule means exactly what it says, and when that rule was adopted here it was expressly stated, not once but forty times, that it meant what it said, and if that rule was adopted

[1] First Session, 52d Congress, *Record*, vol. 23, part 2, p. 1821.

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it would be in order at any time during the day's proceedings to call up for consideration a report from the Committee on Rules. Now, Mr. Speaker, I move to lay the appeal of the gentleman from New York [Mr. Tracey] on the table. [Cries of "Vote!" "Vote!"][1]

After the appeal had been laid on the table by a vote of 194 to 73, Mr. Covert, rising for a parliamentary inquiry, asked: "Would not a motion that the Journal of Saturday's proceedings be now read be in order?"

The Speaker. It would not. What is the statement of the gentleman from New York [Mr. Tracey]?

Mr. Tracey. I raise the question of consideration, Mr. Speaker.

The Speaker. The Chair holds that the question of consideration can not be raised upon the report.

Mr. Tracey. Why, Mr. Speaker? [Laughter.]

The Speaker. The rule provides that: "It shall always be in order to call up for consideration a report from the Committee on Rules, and pending the consideration the Speaker may entertain one motion that the House adjourn *etc.*"[2]

Mr. Tracey again appealed from the decision of the chair, and in discussing this appeal, Mr. Warner of New York said: "We are on the point, as a Democratic House, of enforcing a more arbitrary rule in a more arbitrary manner than any that was made or enforced by the Fifty-first Congress, by virtue of whose crimes most of us are here." This statement was greeted with "laughter and applause."

The motion to table the appeal was carried 178 to 82. A motion to recommit was then rejected, the previous question was ordered, and after thirty minutes' debate under the rule the report was adopted by a vote of 190 to 85. The full proceedings filled nearly fourteen pages of the Record, at the close of which appeared this entry: "The Speaker. The Clerk will read the Journal of the proceedings of yesterday. [Laughter.]"

Experience in the management of special orders in a few Congresses enabled the Committee on Rules to secure their

[1] First Session, 52d Congress, *Record*, vol. 23, part 2, p. 1824.

[2] *Ibid.* p. 1826.

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adoption with smoothness and rapidity. The proceedings on the special order[1] for the consideration of the Railroad Rate Bill, presented in the Fifty-eighth Congress on February 6, 1905, furnish a good example.

Mr. Dalzell. I move the adoption of the report, and on that I ask for the previous question.

The Speaker. The gentleman from Pennsylvania moves the adoption of the report, and on that demands the previous question.

Mr. Williams of Mississippi. Does the gentleman mean to cut off debate on the adoption of the report?

Mr. Dalzell. Certainly not.

Mr. Williams. I hope the resolution will be voted down, Mr. Speaker.

[1] The report of the Committee on Rules was as follows:

"The Committee on Rules to whom was referred House Resolution No. 484 have had the same under consideration and respectfully report the following in lieu thereof:

"Resolved, That immediately on the adoption of this order and daily hereafter, immediately on the approval of the Journal, so long as the bill hereinafter referred to shall be pending in the Committee of the Whole House on the State of the Union, the House shall resolve itself into Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 18588) to supplement and amend the act entitled 'An act to regulate commerce' approved February 4, 1887.

"That after said bill shall have been read, the Clerk shall read also the amendment in the nature of a substitute offered by the minority of the Committee on Interstate and Foreign Commerce, and printed on pages 13 and 14 of Report No. 4093, which amendment shall thereupon be considered as pending.

"That general debate shall continue on said bill and pending amendment until Thursday next at 3:00 P. M.: Provided that on Wednesday next at 12:55 P. M. the Committee of the Whole House on the State of the Union shall rise: and provided further, That so soon as the counting of the electoral vote shall have been completed, the Committee of the Whole House on the State of the Union shall immediately resume its sitting for further general debate on the said bill (H. R. 18588).

"That so soon as general debate on the said bill shall have been completed at 3:00 P. M. on Thursday next, the Committee of the Whole House on the State of the Union shall immediately rise and report the bill (H. R. 18588), with the pending amendment in the nature of a substitute, to the House, whereupon, immediately, without debate, intervening motion, or appeal, a vote shall be taken on the amendment in the nature of a substitute heretofore described and on the bill to the final passage.

"That general leave to print remarks on the bill (H. R. 18588) and the substitute therefor is hereby granted for six legislative days after Thursday next.

"That time of general debate as herein provided shall be equally divided, one-half to be controlled by Mr. Hepburn of Iowa, and the other half by Mr. Davey of Louisiana.

"And that on Tuesday, Wednesday and Thursday the House shall meet at 11:00 A. M." Third Session, 58th Congress, *Record*, vol. 39, part 2, p. 1947.

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The question was taken and the Speaker announced that the ayes appeared to have it.

Mr. Williams. Division, Mr. Speaker.

The House divided; and there were: ayes 162, noes 155.

Mr. Williams. We will have the yeas and nays on that.

The yeas and nays were taken.

The Speaker pro tempore. The previous question is ordered. The gentleman from Pennsylvania [Mr. Dalzell] has twenty minutes and the gentleman from Mississippi [Mr. Williams] controls the time on the other side for twenty minutes.[1]

The debate which followed was spirited and not entirely devoid of personalities, but it was free from the time-wasting motions of an earlier day. In opening the debate for his side, Mr. Williams, the minority leader, said:

Mr. Speaker, merely saying that I take it for granted that every man in the House on that side of the Chamber knew when he voted for the previous question that the only way in which this rule could be amended was by voting down the previous question, and that, therefore, his vote meant that he wanted no opportunity to amend the rule, nor to permit himself or anybody else by that amendment to amend the bill offered by the majority, I now yield nine minutes to the gentleman from Missouri [Mr. De Armond].

Mr. De Armond forcibly expressed the sentiment of growing dissatisfaction with the curtailment of individual activity through the workings of these special orders. He said in part:

The treatment of that most important question which this rule provides for is wholly inadequate, narrow and partisan. The rule is not designed to enable this House to consider the great question on its merits, or to vote upon it according to the judgment of the individual members upon either side of the House. The design, so far as the rule is concerned, is to deprive the members upon this side and upon that side of the right of choice which equality here gives us; the constitutional equality which those who elected us, severally, to this body had reason to suppose, and ought to be justified in supposing, our election would ensure us when we came here as members. The purpose

[1] Third Session, 58th Congress, *Record*, vol. 39, part 2, p. 1948.

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of this rule is to prevent the offering of amendments with a view of improving the measure which is to be considered.

We have upon our side the individual judgment of gentlemen who are opposed to what has been done, who are opposed to what will be done, dragooned and coerced by the tremendous power of a partisan majority into stifling their own judgment and voting against their own convictions—a doing of that which their judgment and their conscience tells them ought not to be done. So far as that goes, I leave it with them and their party and their conscience. It is up to those who brought in the rule and who sincerely supported it because it does what they wish to have done, and those who insincerely, taking counsel of their fears rather than of their courage, support it, although it is to bring about that which they desire not to have done. . . .

This rule will be adopted, if we may place confidence in what one hears, by the votes of men who would be glad to amend this measure; by men who believe it is not the best measure that could be offered; men who believe the bill will be strangled in the Senate; that it is to be sent over there for strangulation, or believe that if it passes there at all, it will come back here changed so that its best friends will not recognize it. [Laughter].[1]

This unfavorable view of the generalship of the Committee on Rules was shared by Mr. Williams, the minority leader. He added:

What you are really trying to do by this rule is to prevent this side, anxious to carry out the vital principles of the President's recommendation, . . . from doing that thing, from enacting into legislation in full those principles, our principles before he espoused them. The rule is brought here for the purpose of preventing a majority of this House—composed of this side solidly, with enough of that side to make a majority—from formulating and bringing forth a bill which would accomplish this purpose. Your object in this rule is to prevent them from amending your own bill with our assistance. [Applause on the Democratic side.][2]

Mr. Dalzell, in charge of the report, saw nothing wrong in thus shutting off individual amendments. He thought that in presenting for a vote of the House the mature conclusions of

[1] Third Session, 58th Congress, *Record*, vol. 39, part 2, pp. 1948, 1949.

[2] *Ibid.* p. 1950.

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the two sides represented in the Committee on Interstate and Foreign Commerce all the requirements of fairness had been fulfilled. "This rule," he said, "displays the fairness of the Republican party in the House in allowing the minority to offer any substitute at all. [Laughter.]"[1] The report was adopted by a party vote.

If, after sixteen years' experience with the privileged special order any doubt existed in the House as to the ability of the Committee on Rules to meet any parliamentary situation whatever, that doubt must have been dissipated when the special order for dealing with the report of the Conference Committee on the Tariff Bill was brought in on July 31, 1909. In order to adjust an irreconcilable difference between the House and the Senate as to one of the schedules of this bill, the Conference Committee adopted a provision which did not conform to the action taken by either body. This provision was accordingly subject to a point of order which the opponents of the bill were only too eager to use to its disadvantage. To meet this situation without the risk of exposing the entire bill to further discussion and possible defeat, it was necessary to suspend for a time the right so dear to the Congressional heart to make points of order.[2]

The foregoing recital has failed of its purpose if it has not established at least two facts: (1) By a very gradual process, growing naturally out of conditions in the House of Representatives itself, certain principles had become imbedded in the rules and practices of the House that made the Committee on

[1] Third Session, 58th Congress, *Record*, vol. 39, part 2, p. 1951.

[2] This was done by the following special order:

"Resolved, That immediately upon the adoption of this order the House shall proceed to consider the report of the managers of the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes; that none of the provisions of said report shall be subject to a point of order; that general debate shall continue until 8 o'clock P. M. of this day, unless sooner concluded, and that immediately upon the conclusion of general debate the previous question shall be considered as ordered on the motion to agree to the report; and that general leave to print on the subjects of this report shall be granted for ten calendar days." First Session, 61st Congress, *Record*, vol. 44, part 5, p. 4688.

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Rules an irresistible engine for carrying out the will of the leaders of the majority party. (2) Except at the opening of a Congress, when the committee-appointing power of the speaker exercised a telling influence in favor of party regularity, and when the alternative presented to dissatisfied members was an indefinite period of parliamentary chaos, it was not possible in any regular way to amend the rules of the House of Representatives against the will and pleasure of the Committee on Rules.

This, then, was the situation with which those who sought to curb the power of the Committee on Rules were confronted, after the failure of the insurrection at the opening of the Sixty-first Congress:

(1) The speaker, as a member of the Committee on Rules, could use all the power of his great office to execute the program which he, as the leading member of that committee, had arranged.

(2) The committee had the right to report at any time. [1]

(3) The consideration of the reports of the committee could not be put aside. [2]

(4) Debate on the report of the committee could be curtailed to forty minutes by the moving of the previous question. [3]

(5) Action on the report could not be evaded by the breaking of a quorum. [4]

(6) The dilatory motion had been robbed of its terrors. [5]

(7) The Committee on Rules, alone of the committees of the House, could hold meetings during a sitting of the House without special leave. [6]

(8) No proposition for a change in the rules could be brought before the House except through a report from the Committee on Rules. [7]

[1] First Session, 61st Congress, rule xi, section 61.

[2] *Ibid.* rule xi, section 61, clause 2.

[3] *Ibid.* rule xvii, section 1, and rule xviii, section 3.

[4] *Ibid.* rule xv, section 3.

[5] *Ibid.* rule xvi, section 10, and rule xi, section 61, clause 2.

[6] *Ibid.* rule xi, section 62.

[7] *Ibid.* rule xi, section 53.

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The March Revolution

The suppression of the uprising of the Democrats and "insurgent" Republicans at the opening of the Sixty-first Congress was not looked upon by either side as a permanent cessation of hostilities. The leaders of the regulars, however, felt secure in their position during this Congress: they were sure that there was no disposition on the part of the majority of the Committee on Rules to report a reforming resolution, and they were confident that there was no power to compel the committee to take such action. Doubtless, too, they believed that the concession of a Calendar Wednesday [1] and the requirement of a two-thirds vote to set it aside would be sufficient to satisfy the demands of the opposition for the current Congress, and probably they were thrown off their guard by this belief.

But this very Calendar Wednesday—"Holy Wednesday" it came to be called—was to serve as the occasion for bringing about the downfall of that part of the system which had been secure from effective attack for more than half a century. On Wednesday, March 16, 1910, Speaker Cannon recognized Representative Crumpacker, chairman of the Committee on the Census, for the purpose of calling up for consideration a minor amendment to the Census Bill.[2] This was clearly a tactical mistake. There was no opposition to the proposed amendment itself; but the men who had fought for the establishment of Calendar Wednesday—a day that was to relieve them from the galling necessity of seeking the speaker in his inner chamber when they desired recognition—felt that the introduction of this measure at this time would create an objectionable precedent, tending to impair the value of the concession they had gained. A point of order was raised by Representative Fitzgerald, of New York. The speaker's ruling that the census amendment was in order as a matter of constitutional privilege was promptly challenged, and after a long discussion the ruling of the speaker was reversed by the House.[3]

[1] Rules of 61st Congress, rule xxvi, section 4.

[2] Second Session, 61st Congress, *Record*, vol. 45, part 3, p. 3240.

[3] *Ibid.* p. 3251.

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Thomas B. Reed, speaking in the House of Representatives on January 26, 1892, said: "I have been fifteen years in Congress, and I never saw a speaker's decision overruled, and you will never live to see it either."[1] The events of this and the succeeding days were to prove that the greatest parliamentarians are not infallible when they enter the uncertain field of prophecy.

When on the next day, Thursday, March 17, Mr. Crumpacker again claimed precedence for his census amendment on the ground of a mandatory provision of the Constitution, a point of order was again made; but the speaker shrewdly decided to dispense with the inevitable appeal and debate thereon by referring the question to the House for decision. At the conclusion of a review of the parliamentary situation he said:

> Now, the Chair, in view of the recent vote of the House, and of the value of the vote of yesterday as a precedent, prefers not to rule, but to submit to the House [great applause]: "Is the bill called up by the gentleman from Indiana in order as a question of constitutional privilege, the rule prescribing the order of business to the contrary notwithstanding?"[2]

For this statement of the question by the speaker, the House, watchful against precedents that might weaken its defense of Calendar Wednesday, secured the substitution of the following: "Is the joint resolution called up by the gentleman from Indiana in order now?"[3] Thus stated, the question was answered in the affirmative by a vote of 201 to 72. In thus reversing itself the House showed clearly that it was less concerned with the constitutional question involved than with the necessity for preserving the integrity of Calendar Wednesday. In view of the further proceedings of the day, however, it is interesting to note that such Insurgents as Cooper, of Wisconsin, Fish, Fowler, Gronna, Haugen, Hayes, Hinshaw, Kinkaid, Madison, Murdock, Norris and Poindexter were recorded against the proposition

[1] First Session, 52d Congress, *Record*, vol. 23, part 2, p. 647.

[2] Second Session, 61st Congress, *Record*, vol. 45, part 3, p. 3287.

[3] *Ibid.* p. 3289.

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that the census amendment presented a question of high constitutional privilege.[1]

It would have been surprising if, among the keen-witted men in the ranks of the Insurgents, no one had discovered the parliamentary opening for an attack on the rules that was presented by these decisions of the speaker and of the House. Just before the House rendered its decision, Mr. Norris clearly indicated his future line of attack in this colloquy with Mr. Olmstead:

Mr. Norris. I want to ask the gentleman, on the constitutional proposition, if his theory is right, would it not follow that this would be in order, even though there was no report of a committee on the resolution? To make myself plain, if it is in order because the Constitution makes it in order, then the report of a committee on the census does not add anything to it. Would not that follow?

Mr. Olmstead. It has been so held in election cases as to the right of a member. It was so ruled by Speaker Reed.

Mr. Norris. Any member could come in with a bill that had not even been printed and take up the time of the House on the ground that it was an amendment to the census law?

But from this moment the gentleman from Pennsylvania was wary. "I think he would have to come in the regular way," was his cautious reply.

Mr. Norris. He would have claim to recognition, of course.

Mr. Olmstead. He would not get any standing unless he came in in the regular and proper way.[2]

Mr. Norris. Would it not follow logically from the gentleman's theory that any member of the House tomorrow could present here a bill touching the census without having it referred to a committee, as a question of the highest privilege under the Constitution and the law, and would it not be the duty of the Speaker to say that this was privileged?

Mr. Olmstead. I do not think every amendment to the census law would be privileged.

[1] Second Session, 61st Congress, *Record*, vol. 45, part 3, p. 3290.

[2] The truth of this statement, when the House is acting under normal conditions, was strikingly and amusingly illustrated during the Third Session of the 61st Congress. *Cf. infra*, p. 411.

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Mr. Norris. No; but you could have one on this point, or he could bring in a bill making a new census law.

Mr. Olmstead. I do not think the House would consider it for a minute unless it came in backed by a committee report.

Mr. Norris. Would not it be privileged, and would it not be the duty of the Speaker to let it come in? The House could vote it down, of course.

Mr. Olmstead. I do not know what the Speaker would feel it his duty to do. I think it would have more privilege if it came in in the regular and proper way. There are certain matters arising under the Constitution which any gentleman could rise in his seat and claim to be of the highest privilege, in spite of any rule.

Mr. Norris. And I take it that it would necessarily be one according to the gentleman's claim.

Mr. Olmstead. Well, that is because of the supremacy of the Constitution over and above the rules of the House.[1]

Two courses were open to Mr. Norris and his followers. If they could convince the speaker that the Constitution gave to the making of rules the same degree of privilege it gave to the taking of the census, the way would be cleared for the amendment of the rules whenever the necessary votes could be obtained, the paragraph requiring reference of such matters to the Committee on Rules to the contrary notwithstanding. If, on the other hand, the speaker should decide such an attempt to amend the rules to be out of order—and the personality of Speaker Cannon made it probable that he would so rule—the same result could be accomplished with a little more trouble by overruling his decision.

After the House had voted to give precedence to the Crumpacker amendment to the Census Bill, this amendment was quickly adopted. Some other matters then engaged the attention of the House for a brief period. After these were disposed of, Mr. Norris, of Nebraska, after three attempts to gain recognition from the speaker, secured the floor, took from his pocket a well-worn manuscript, and the fight was on.

Mr. Norris. Mr. Speaker, I present a resolution made privileged by the Constitution.

[1] Second Session, 61st Congress, *Record*, vol. 45, part 3, p. 3285.

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The Speaker. If it is a resolution made privileged by the Constitution, the gentleman will present it. [Laughter.]

The clerk then read a resolution providing for a Committee on Rules, to consist of fifteen members, geographically distributed, nine of whom should be members of the majority party, and excluding the speaker from membership.[1]

Mr. Dalzell. I make the point of order that that is not in order. It is not privileged.

Mr. Norris. On that point of order I want to be heard, Mr. Speaker.

The Speaker. The Chair will hear the gentleman.

Mr. Norris. We have just decided by a vote of the House a census bill coming under the Constitution which reads as follows: "The actual enumeration shall be made within three years after the first meeting of the Congress of the United States and within every subsequent term of ten years, in such manner as they shall by law direct." It is a privileged question, and it is entitled to consideration, notwithstanding that it conflicts with the rules of the House.

Now, article 1, section 5, paragraph 2, of the Constitution reads as follows: "Each House may determine the rules of its proceedings."

I submit, Mr. Speaker, if the action of the House just had makes a census bill privileged because of the Constitution, then any proposition to amend the rules must be privileged by virtue of that same instrument. It does not add to the privileged nature of the census bill that it is reported by a committee, and that was practically admitted in the discussion that took place upon the floor of the House in the colloquy between myself and the gentleman from Pennsylvania [Mr. Olmstead]. If it was privileged, it was privileged because the Constitution made it so, and having decided that it was privileged, because the Constitution made it privileged, its privileged character was not added to by the fact that it had been referred to a committee and a report made by the committee. Therefore, if that reasoning is good, if that judgment of the House is right, then it must follow that, because the Constitution provides that the House shall make its rules, under that decision it must be in order to offer from the floor of the House a resolution to change the rules of the House.

Mr. Olmstead rose.

Mr. Norris. I will yield to the gentleman from Pennsylvania, Mr. Olmstead.

[1] The substitute for this resolution, which was adopted after a three days' struggle, is given in full *infra*, pp. 408, 409.

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Mr. Olmstead. I merely wish to suggest to the gentleman from Nebraska [Mr. Norris] that, while in the case of the census the Constitution is mandatory and says the enumeration "shall be made," as to the rules of the House the Constitution is merely permissive. Undoubtedly we may make rules and undoubtedly we may change them, but the Constitution does not say we must change them, and therefore gives no constitutional privilege to such a motion to displace all other business.

Mr. Norris. As to the suggestion made by the gentleman from Pennsylvania [Mr. Olmstead], I will say that I have not presented anything here that says we "must." If we have a right to vote it down, it is not mandatory. If the Constitution says we must, I presume under the gentleman's construction we would not be allowed any discretion as to how we shall vote.

Mr. Dalzell. The House is not compelled to make rules in order to carry on its business. In the Fifty-first Congress the House proceeded without rules and under the ordinary parliamentary law. Therefore, as my colleague from Pennsylvania, Mr. Olmstead, has pointed out—

Mr. Norris. I understand that.

Mr. Dalzell (continuing). There is no mandatory command upon the House to make rules.

Mr. Norris. There is no mandatory command in this resolution.

Mr. Dalzell. The rules are not pursuant to any command from the Constitution, but they are simply for the orderly procedure of business.

Mr. Norris. The Constitution says we *may* make rules. We have just decided that when the Constitution gives us the right to do a thing it is in order to bring in the proposition at any time. [Cries of "Oh, no!"] Let me finish and I will yield again. This resolution is not a mandatory affair; it is something that the Constitution gives us the right to do, however. The gentleman will have to admit that.

The Constitution gives us the right to do this; consequently when we bring in under the constitutional provision a resolution to do just what the Constitution gives us permission to do, I say, under the recent decision, it must be in order.

Mr. Dalzell. No; the gentleman fails to make a very plain distinction. The Constitution gives the right to do it, but that does not make it privileged in the sense that the Constitution makes it, as to legislate upon a particular subject, but in that case the subject matter is privileged.[1]

[1] Second Session, 61st Congress, *Record*, vol. 45, part 3, p. 3292.

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In the contest for the mastery of the House thus opened, the solid strength of the Democrats and Insurgents was pitted against the regular Republicans. The regulars, warned by recent defections, deemed it prudent to play for time, in the hope of being able to summon enough absent members to prevent the reversal of the speaker's decision. Speaker Cannon, therefore, withheld his decision for an unprecedented time, while his lieutenants vainly sought to secure an adjournment or recess. The Insurgent and Democratic allies on their part grimly held the House in session all night; and it was not until twenty minutes after two o'clock on the afternoon of the 18th that a recess was taken until four o'clock.[1] This recess of less than two hours was agreed to, it is said, on the understanding that the speaker would be ready to give his ruling on the point of order at its conclusion.

When the House met at four o'clock the speaker expressed his readiness to rule.[2] The House, conscious of another struggle impending, decided to prepare itself for the trial of strength by a night's rest and postponed the announcement of the ruling to 12:05 P. M. on the next day; but this was done only after the allies had satisfied themselves that no unfair advantage would be taken of their concession. Their attitude of suspicion was justified, on the following afternoon, by the reprehensible conduct of Mr. Mann, one of the parliamentary experts of the House, in attempting to deprive Mr. Norris of his hard-earned privilege of presenting his resolution for a vote.[3]

In the long hours of the night of March 17 and the morning following, much was said and done that was irrelevant and disorderly.[4] For once in the recent history of the House of Representatives every member said what he wanted to say and took as long as he desired to say it. In this mass of material, per-

[1] Second Session, 61st Congress, *Record*, vol. 45, part 3, p. 3416.

[2] *Ibid.* p. 3417. [3] *Ibid.* part 4, p. 3429.

[4] *Cf.* for example, the remarks submitted on the arrest of Mr. Hollingsworth of Ohio (*ibid.* part 3, pp. 3394, 3395); the disrespectful treatment of the venerable ex-Speaker Keifer (pp. 3328, 3329); and the suggestion of Mr. Payne that "the gentleman does not seem to know a point of order from a hole in the ground" (p. 3406).

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haps the best statements of the arguments on either side are to be found in the remarks of Mr. Olmstead, chairman of the Committee of the Whole, and Mr. Parker, of New Jersey, chairman of the Judiciary Committee, representing the regular Republicans, and of Mr. Poindexter of Washington, Mr. Clark, the minority leader, and Mr. Cooper, of Wisconsin, representing the coalition of Insurgents and Democrats.

Mr. Olmstead. We have now passed the Census Bill. Any further bill would not be in order, because we have completed the constitutional mandate. We have power to change the rules undoubtedly, but a motion to change them simply proposed from the floor can not displace and take precedence of all other business in violation of the rules. I am not discussing the merits of the proposition. It may be wise to change the rules. Some of us are very anxious to change the rules. That, however, is not the question now. What is now to be passed upon is the point of order. The question is whether this proposition is one of constitutional privilege, higher than all the rules and entitled to come in ahead of business which must now be considered unless the rules are utterly disregarded. If you hold that it is, then you hold that everything is privileged. If everything we may do under constitutional authority is privileged, then, as Mr. Speaker Reed well said, we have in fact no privilege at all, and we are simply a chaotic and disorderly body.[1]

Mr. Parker. It is insisted, Mr. Speaker, that a motion to amend the rules may be brought before this House at any time by any member as a matter of the highest constitutional privilege without previous reference to the Rules Committee, and that it shall be always in order. You gentlemen on the other side claim that you may be sometime in the majority. I ask you, and I ask gentlemen on this side, how this House will do business at all if any member of the minority can at any time move to amend the rules of this House, and that question must come up for debate, and for roll calls on the previous question, and on the question itself, supported by that minority. . . . No such means for a filibuster was ever framed as to say that a motion to amend the rules of this House can be brought forward by one member at any time and that with the support of one-fifth of the House roll calls can be demanded. . . .

I will ask the leader of the minority [Mr. Clark of Missouri] whether

[1] Second Session, 61st Congress, *Record*, vol. 45, part 3, p. 3295.

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he would like that power put in the hands of any minority of the House if he should be the leader of a majority party? . . . I have put a question which has not been answered. It is unanswerable. The adoption of this principle that any man at any time may bring forward as a matter of high constitutional privilege a motion to amend the rules, and have it determined in the House without reference to a committee and without action by a Rules Committee, not only destroys all its functions, but is an abdication by the House of the power to do business. . . .

No such system of anarchy and chaos can be allowed in any deliberative body. The question now before us on the point of order is immeasurably more important than any question as to who shall be our Committee on Rules; for if this precedent be established, and this debate is in order, the Committee on Rules is as absolutely without power to do business as is the House itself. . . .[1]

Mr. Poindexter. Mr. Speaker, the gentleman from New York, who has just taken his seat, said, I think, very properly and correctly, that a permanent system of rules is of greater importance for the minority than it is for the majority. It is very evident that the majority can ordinarily take care of itself. But without regular rules for the prosecution of business, which operate in the parliamentary proceedings of a legislative body as the constitution does in the government of a nation, the minority would be absolutely at the mercy of the majority. Now, I make this proposition, that being the case correctly stated by the gentleman from New York, that under the system of procedure in this House, particularly that portion of the system referred to in the resolution of the gentleman from Nebraska, there is no regular permanent system of rules by which the business of this House is transacted. [Applause.]

Upon every occasion when an emergency arises, when an important crisis comes up in the legislation of this House, what is the result so far as parliamentary procedure is concerned? There is a special order brought in, ordering how this House shall proceed, placing limitation upon the membership of this House, abrogating or setting aside the regular rules, the virtue of which has been extolled by the gentleman from New York. Who brings in these special orders? That is a matter to which I want briefly to refer, the relief of which is intended and will be accomplished by the resolution introduced by the gentleman from Nebraska. Special orders are brought in not by an impartial,

[1] Second Session, 61st Congress, *Record*, vol. 45, part 3, pp. 3313, 3314.

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disinterested parliamentary body; they are not evolved from any rule or principle of parliamentary usage. They are brought in by a committee of which the Speaker of the House is the controlling factor, that Speaker being at the same time the partisan leader of the majority party in this House. He is not the leader on the floor, but recognized, as I have heard him state, as the responsible leader of the Republican party so far as the House of Representatives is concerned.

So the minority, under the protection which it is said they have by this system of rules, is completely at the mercy of the committee of which the controlling factor is the partisan leader of the majority party, aided by two members of that party, both partisans selected by himself. [Applause.]

We have seen here under that system a tariff law, perhaps affecting more intimately and more universally all classes of the people in this country than any other legislation this House has been called upon to pass, containing thousands of items, reaching into every industry and every occupation—we have seen those who, whether justly or unjustly, have been charged with having special interest in certain legislation connected with the tariff law, bring in an arbitrary rule or a special order—not entitled to be called a rule, because it was not a rule of general conduct—but an order saying that this House, or the membership of this House, should not have the privilege of offering an amendment and taking a vote upon it. [Applause.]

If the majority of this House had been protected by a set of regular rules operating generally during the session, not subject to the absolute dictation of three men, one of them the Speaker, and the other two chosen at his mercy, as all of the other committees in the House are chosen, there would not have been the dissatisfaction—

Mr. Tawney. Will the gentleman yield for a question?

Mr. Poindexter. I will yield to the gentleman.

Mr. Tawney. Before any rule or special order from the Committee on Rules can become operative it must be adopted by a majority of the House of Representatives, must it not?

Mr. Poindexter. It must be adopted by a majority acting under the whip and spur of the organization of the House, which organization is controlled by the same man, by his power of appointing all committees, who controls the Committee on Rules. [Applause.] . . .

Mr. Tawney. The gentleman stated a moment ago that the Committee on Rules was appointed by the Speaker of the House. The gentleman, if he attended the Republican caucus, knows that the two Republican members of that committee, who serve on that committee together with the Speaker, were elected by the Republican caucus.

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Mr. Norris. Will the gentleman from Washington permit an interruption there?

Mr. Poindexter. Yes.

Mr. Norris. I would just like to correct the gentleman to say that, while perhaps in one sense that is true, in reality the Republican caucus confirmed appointments already made and selected by the Speaker. [Applause and cheers on the Democratic side.]

Mr. Tawney. I want to say in answer to the gentleman from Nebraska that the Speaker did not even suggest the two members selected by the Republican caucus for the Committee on Rules.

Mr. Norris. Well, then, the gentleman himself must have done it.

Mr. Tawney. It was on my own motion that the gentleman from Iowa [Mr. Smith] and the gentleman from Pennsylvania [Mr. Dalzell] were elected.

Mr. Norris. And any man who has been here any length of time knows that when a motion comes from the gentleman from Minnesota [Mr. Tawney] it originates not very far from the Speaker of this House . . . . .[1]

Mr. Clark. . . . Well, now, suppose that a majority of the members of this House had made up their minds to change these rules. How are you going to do it? If it is not a matter of privilege and you can not get it up that way, how are you going to accomplish it? Suppose some gentleman here offers an amendment to the rules or a new set of rules or a new rule. He puts it in the basket. It is referred to the Committee on Rules, and it might as well be referred to the sleepers in the catacombs. [Laughter and applause.] I violate no secret when I tell you that the Committee is made up of three very distinguished Republicans and two ornamental Democrats. [Laughter.] They have a majority of one, but a majority of one in a committee of five is as big a majority as a majority of 47 in this House, and my own opinion is, from both observation and experience, that there never would be a rule reported out of that Committee that the Speaker and his two Republican colleagues do not want reported. It is an impossibility in nature. And I say now . . . that if you want to change the rules, now is the accepted time and this day the day of salvation. [Loud applause on the Democratic side.][2]

Mr. Cooper, of Wisconsin, having called up a number of in-

[1] Second Session, 61st Congress, *Record*, vol. 45, part 3, pp. 3296, 3297.

[2] *Ibid.* p. 3294.

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surgent Republicans, to testify to the punishment they had received in the way of unfavorable committee appointments for opposing the rules, and having secured from the speaker the admission that he deemed such action necessary in the interest of party regularity, the following interesting light was shed on the inner workings of the House organization as viewed by the opposition:

Mr. Cooper, of Wisconsin. The issue just presented by the Speaker is this: If, in the House, a member votes against rules adopted by the caucus his political destiny is in the hands of the Speaker. He can be punished by the Speaker for voting against rules adopted by a caucus, although our party has never declared in favor of any set of rules. The House rules have not entered into our party creed, and yet he arrogates to himself the right to say, and has just announced, that gentlemen must follow the caucus on the rules or he can punish them, discredit them in the eyes of their constituents, lessen their influence on this floor, coerce them into doing his will. Now I will yield to the gentleman from Nebraska.

Mr. Norris. I was going to suggest to the gentleman from Wisconsin that it might be well, while he and the Speaker are asking questions back and forth, to inquire whether it is not true that not only the Republicans who refused to vote for the old rules were punished, but that on the Democratic side of the House those who joined with the Republicans and voted to adopt the old rules were rewarded for going back on the Democratic party. [Applause on the Democratic side.] [1]

The speaker's ruling, given at the convening of the House on March 19, was a clear and temperate statement of the precedents and practices of the House sustaining the position that the proposed attempt to amend the rules was not in order. In conclusion he said:

Planting himself upon the law made for the House by Mr. Speaker Randall, appealing from the passion of this day to the just reasons of that day, the Chair sustains the point of order and holds that the resolution is not in order. [Loud and long-continued applause on the Republican side.] [2]

[1] Second Session, 61st Congress, *Record*, vol. 45, part 3, p. 3321.

[2] *Ibid.* part 4, p. 3426.

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Although seventy-six pages[1] of the *Record* are filled with discussion ostensibly held for the speaker's enlightenment, everyone knew from the beginning what position he would take. Everyone knew, too, that Mr. Norris would appeal from the decision and move the previous question, and that Mr. Dalzell would move to lay the appeal on the table. These expected things happened, together with an attempt to defeat action through a motion to adjourn, which was promptly voted down.[2] The House refused to lay the appeal on the table, and under the operation of the previous question the decision of the chair was overruled by a vote of 162 to 182, after which the speaker, without comment, placed the Norris rule before the House.[3] After an ineffectual attempt to agree upon the amount of time to be given to debate, Mr. Norris took the floor to present a substitute resolution, which represented a crystallization of the best thought of the allies since they had discovered that the opportunity for rule-making was at last within their grasp. Mr. Norris said:

Mr. Speaker, while personally I prefer the resolution I offered the other day and which is now before the House over the substitute which I am going to offer, yet my associates, or a good many of them at least, are of the opinion that the substitute which I intend to offer is better than the original resolution. Therefore, in accordance with their wishes, I expect to support the substitute which I now send to the Clerk's desk for the resolution that is now pending.

The substitute resolution was then read by the clerk, as follows:

Resolved, That the rules of the House of Representatives be amended as follows:

1. In Rule X, paragraph 1, strike out the words "on Rules, to consist of five members."

2. Add new paragraph to Rule X, as follows:

Paragraph 5. There shall be a Committee on Rules elected by the House, consisting of ten members, six of whom shall be members of

[1] Second Session, 61st Congress, *Record*, vol. 45, part 3, pp. 3292–3335, 3388–3417.

[2] *Ibid.* part 4, p. 3426.

[3] *Ibid.* p. 3428.

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the majority party and four of whom shall be members of the minority party. The Speaker shall not be a member of the Committee and the Committee shall elect its own chairman from its own members.

Resolved, further, That within ten days after the adoption of this resolution there shall be an election of this Committee, and immediately upon its election the present Committee on Rules shall be dissolved.

Mr. Norris held the floor for an hour, yielding to such members, including a few regulars, as desired to be placed on record. Under the circumstances the debate on the substitute was a one-sided affair, the leaders of the regulars generally declining to speak unless given the floor in their own right. In this discussion the remarks of Mr. Clayton and Mr. Underwood may be taken as expressing fairly the viewpoint and the aspirations of the political combination that gained the ascendancy.

Mr. Clayton. Mr. Speaker, this is a crisis in the legislative history of the country. Those of us who favor the proposition advanced by the gentleman from Nebraska [Mr. Norris] recognize that it may be denominated revolutionary. So far as the parliamentary propositions are concerned, I am willing to concede that it is revolutionary, but it is necessary to overcome this arbitrary power of the Speaker. The American people demand it. We are ready to secure it, and we have the votes to enforce the resolution offered by the gentleman from Nebraska. We are responsible to our constituencies and to the American people. I do not care how our conduct may be characterized, but we stand here ready to vote up the proposition offered by the gentleman from Nebraska, and I am confident the American people will approve our votes. [Applause on the Democratic side.] [1]

Mr. Underwood. Mr. Speaker, if this resolution is adopted by the House, we have reached the end of an era in the parliamentary history of this body. More than a decade ago, when Mr. Reed was elected Speaker of this House, the House, on account of the large number of members here, found it impossible under the rules then existing to do business. Speaker Reed adopted a system of rules that would allow the majority of this House to do business at any time, but in doing so he lodged the power of the House in the Speaker, and there it has remained since that time. Now, we have no fight to make on the

[1] Second Session, 61st Congress, *Record*, vol. 45, part 4, p. 3432.

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personality of Joseph G. Cannon, of Illinois. We are fighting a system, and that system is the system that enables the Speaker, by the power vested in him, to thwart and overthrow the will of the majority membership of this House. We recognize to-day that there has to be leadership, that some man must be the leader of the majority and some man must be the leader of the minority, but we say the place for that leadership is not in the Chair. [Applause on the Democratic side.]

If this resolution goes through—ultimately, if not to-day—the Speaker of the House of Representatives will cease to be its leader and the Chairman of the Committee on Rules elected by this House will become the leader of the majority party in the House. It does not deprive the House of one scintilla of its power to control its business. It does not deprive it of the right leadership, but it divorces from the Speaker the leadership of the House. There is no great parliamentary body in the world of which the Speaker is the leader. It is not so in the British Parliament; it is not so in the Senate of the United States. And yet those two great bodies are able to transact their business as efficiently as the House of Representatives has ever done. I say that, no matter how high or of what pure character a man may be who occupies the Speaker's chair of this House, that leader cannot divorce the leadership and the partisanship of the leader from the Speaker when he is presiding over the deliberations of this House. This great parliamentary body is entitled to a presiding officer who wields the scales of justice between man and man, between two contending political parties, and that is what we are standing for to-day. [Applause on the Democratic side.][1]

The Norris substitute was agreed to by a vote of 193 to 153, and the revolution was consummated by passing the resolution as amended by practically the same vote.[2]

The dramatic action of the speaker which followed and the refusal of the House to pass the Burleson resolution declaring his office vacant made a fitting climax to the stirring events of the day; but with these matters, which, however interesting, were wholly personal, we are not at present concerned.

If the speaker needed any vindication, it was furnished, less dramatically, indeed, but far more conclusively, by a scene that took place in the House nearly a year later. However justifiable the innovations of March 19 may have been, if in the minds

[1] Second Session, 61st Congress, *Record*, vol. 45, part 4, p. 3433. [2] *Ibid.* p. 3436.

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of thinking men there lingered any doubt as to their revolutionary character, the doubt was dispelled, on this later occasion, by the open confession of the revolutionary leaders.

In the third session of the Sixty-first Congress, on January 9, 1911, Mr. Fuller, of Illinois, presented an amendment to one of the rules and claimed for it the constitutional privilege that had been accorded by the House to the Norris resolution.[1] A point of order was made against the privileged character of the resolution, as on March 17, and the speaker repeated in substance his ruling of March 19; but on this occasion his decision was sustained by the overwhelming vote of 235 to 53,[2] much to the disgust of Mr. Sims, of Tennessee, and a few others who actually believed that the Constitution accorded high privilege to a proposal to amend the rules of the House.

The purely political character of the action taken March 17–19, 1910, is clearly indicated by some of the remarks made in the debate on January 9, 1911.

Mr. Underwood. Mr. Speaker, as I understand the proposition before the House, it is a question of a point of order as to whether the motion of the gentleman from Illinois is in order at this time as a privileged matter. And I judge from his remarks that he bases the status of his motion on the ground that the House took up the Norris resolution last winter, notwithstanding that it had not been reported from the committee, and passed it.

Now, when that resolution was pending before the House last winter, I stated at the time, and most of the gentlemen who spoke on this side stated, that we recognized that the Norris resolution was not in order under the rules of this House, but that the time had come for a legislative revolution in order that we might write in the rules of this House the will of the American people. That was the cause of our vote for the Norris resolution, to make it in order, notwithstanding the decision of the Speaker. We had determined that the American people were in favor of divorcing the Speaker from the Rules Committee. Under the rules and the organization of the House it had become impossible for the majority of this House to secure a vote on that proposition, and therefore we led a revolution, and a successful revolution, in this House. [Applause on the Democratic side.] And

[1] Third Session, 61st Congress, *Record*, vol. 46, part 1, p. 679. [2] *Ibid.* p. 686.

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a revolution that will stand in the rules of this House for many years to come. . . .[1]

Mr. Hull of Iowa. Is not the gentleman's argument more against the policy of the resolution than upon the point or order?

Mr. Underwood. Why, no; because the point that I am making is that, under the precedents, the Norris resolution was purely a matter of revolution, and we had the right to revolutionize at that time. . . .[2]

Mr. Mann. I understand; but a revolution sometimes changes a form of government. What I want to find out is, if I may ask the gentleman, whether he believes now in following up the revolution or in returning to the original form of government? Is he now for the new republic or for the old kingdom? [Laughter.] . . . I do not remember how the gentleman from New York voted on the proposition in the Norris resolution. As I understand, he now contends with me that at the time the decision of the Speaker was correct.

Mr. Fitzgerald. Absolutely correct. . . .

Mr. Sims. Inasmuch as the Rules Committee was elected as the result of the revolution and not as the result of the orderly procedure of the House, does not the gentleman from New York think we had better do away with the fruits of the revolution?

Mr. Fitzgerald. The gentleman from Tennessee can carry out his logical ideas to the limit if he desires, but I thank God my mind is not so constituted that in an effort to be logical I shall do something foolish. I hope I never shall occupy that position. There was a sentiment in this House and there seemed to be a sentiment in the country that the Speaker should not be a member of the Committee on Rules. There was no possible way by which that question could come before this House under its procedure unless the House itself at some time voted upon a matter which would take him from the Committee on Rules; and it did that. . . .[3]

Mr. Sims. But I want to ask the gentleman and this House, what will the country think of a lot of Democrats and Republicans who sit here and solemnly base their action on constitutional warrant and guaranty, and then turn round and admit that they were wrong, and knowingly wrong, that they had no constitutional warrant, that they were willfully revolutionists, however great and imperative the occasion for revolution might have been, but that now they want to get back into the zone of Cannonism.[4]

[1] Third Session, 61st Congress, *Record*, vol. 46, part 1, pp. 680, 681.

[2] *Ibid.* p. 681 [3] *Ibid.* p. 682. [4] *Ibid.* p. 684.

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Notwithstanding Mr. Sims's almost tearful plea, the great majority of the Democratic members, under the leadership of Mr. Clark, of Missouri, voted to sustain the speaker.[1] The insurgent Republicans, either through force of habit or a desire to present a consistent record, voted against the speaker, but they took no part in the debate.

The revolution of March 19 did not result in transferring the government of the House to the victorious allies. The new committee of ten, elected by the House in accordance with the action of party caucuses, included all the members of the old committee of five except the speaker.[2] Not an insurgent Republican or independent Democrat appeared on the list. On the face of things there appeared to be no change, except that a committee controlled by the speaker was replaced by one controlled by the speaker's closest friends. During the Sixty-first Congress no radical departures from former procedure were made by the elected committee. It may well be doubted, indeed, whether such changes are possible, in view of the size of the House and the prolixity of its members in debate. But it cannot be said that there was a revolution in name only and not in substance. A spirit of independence had been effectively displayed in the House, and wholesome respect had come to be felt for a militant minority within the ranks of a brutal majority.

The action of the Democratic caucus on January 19, 1911, in voting to vest in the Committee on Ways and Means the appointment of all the committees of the House, indicated a determination to adhere to the policy of separating the position of speaker from that of party leader. But Mr. Underwood's prophecy, that the chairman of the Committee on Rules would become the majority leader of the House, does not appear to be in process of fulfilment. Rather it seems that, in the Sixty-second Congress at least, the mantle of party leadership has fallen on the shoulders of Mr. Underwood himself, by virtue of his commanding ability and the strategic position which he

[1] Third Session, 61st Congress, *Record*, vol. 46, part 1, p. 694.

[2] Second Session, 61st Congress, *Record*, vol. 45, part 4, p. 3759.

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holds as chairman of the committee-making committee of the House.

If the future can be read from the plainly written story of the past, the fate of the new system will depend, not upon its intrinsic merits, but upon its success in meeting the parliamentary situations that may arise in the House. Speaker Clark may find himself somewhat in the position of Speaker Crisp in the Fifty-second and Fifty-third Congresses, and he may be forced to take measures quite as drastic.

Whether the new arrangement, if continued, will produce in the House a directing body as strong in its personnel and as efficient in its conduct of business as that which the old system produced, the future alone can determine. During the twenty years preceding the reconstruction of the Committee on Rules on March 19, 1910, only nine Republicans and eleven Democrats were members of that committee. These men were: Messrs. Burrows of Michigan, Cannon of Illinois, Dalzell of Pennsylvania, Grosvenor of Ohio, Henderson of Iowa, McKinley of Ohio, Reed of Maine, Sherman of New York, and Smith of Iowa, Republicans; and Messrs. Bailey of Texas, Carlyle of Kentucky, Catchings of Mississippi, Crisp of Georgia, De Armond of Missouri, McMillin of Tennessee, Outhwaite of Ohio, Randall of Pennsylvania, Richardson of Tennessee, Underwood of Alabama and Williams of Mississippi, Democrats. These names are written large in the history of the House of Representatives. The fewness of their number, especially on the Republican side, is significant. If the elective principle continues to prevail in the constitution of the Committee on Rules, it will be an interesting study, twenty years hence, to compare with the achievements of these men what may be accomplished by their successors in the ten Congresses to follow the Sixty-first. Then, and perhaps only then, will it be possible to make a just estimate of the effect on our political history of the revolution of March 19, 1910.

C. R. ATKINSON,
C. A. BEARD.

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THE REFERENDUM IN GREAT BRITAIN

THE sudden promotion of the referendum from a "back seat" to a foremost place in British political discussions makes it desirable to put together such data as we have regarding the theory and practice of this method in the recent history of the United Kingdom. As to its practice, a few sentences will suffice. It is only in minor local matters that instances can be found of the direct expression of the public will in legislation. In any community, for example, where it is proposed to take advantage of the Public Libraries Act, authorizing the levying of a rate, or local tax, for the establishment of a free library, the question is decided by a poll of the ratepayers.

The theory of the referendum (without the use of the technical term) has been made most familiar by the proposals that have been made from time to time to place the granting of saloon licenses in the hands of the people, instead of giving this power to appointed or elected public authorities. A bill of this kind was introduced in the House of Commons in 1864 by the late Sir Wilfrid Lawson. Its weightiest opponent in the debate was John Bright, who attacked plebiscitary methods as un-English and inconsistent with the representative system. On the second reading this Permissive Bill, as it was called, was defeated by 292 to 35. Nine times in subsequent sessions the bill was thrown out by majorities which showed no substantial decrease. In 1879 Sir Wilfrid, guided probably by Gladstone's tactics with regard to Irish disestablishment, elected to proceed by resolution instead of by bill. In the division on the "local-option" resolution, which dealt only with the principle of new legislation, leaving details to be settled later, there were 252 noes to 164 ayes. The new House of Commons elected in 1880 gave the persevering temperance leader his first victory, affirming his resolution by a majority of 26. In 1881 the majority rose to 42 and in 1883 to 87; but, as everybody knows, no measure has yet been passed on the lines then approved. The reports of the debates, both on the Permissive Bill and on

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the local-option resolution, afford considerable material for a study of the opinions of the leading English politicians of the period on the question of direct *versus* representative legislation. It would not be fair, however, to interpret the failure of Sir Wilfrid Lawson's proposals as a definite proof of Parliamentary hostility to plebiscitary methods. The omission to enact a local-option law was due not so much to any theory of government as to the influence of the liquor interests.

Except as a possible means of closing saloons, the referendum was regarded, during these years, in the light of a foreign political curiosity, mainly of interest to connoisseurs in out-of-the-way customs. Now and again the editor of a monthly magazine would find room for an article on "The Referendum in Switzerland," just as at other times he might publish one on "The Mir in Russia," with no more expectation in one case than in the other of any illumination of British politics. When the control of the Commons by the Liberals in 1906, after eleven years on the opposition benches, aroused the Lords to a re-assertion of their powers, the referendum began to be mentioned seriously as one of the expedients by which deadlocks between the two houses might be solved. It was especially advocated by a leading Liberal organ, the Manchester *Guardian*, in a series of articles published in February, 1907, which discussed the general problem of the second chamber. That this method was far from being approved in the official counsels of the party was evident from the speech of the prime minister, Sir Henry Campbell-Bannerman, in introducing his anti-Lords resolution on June 24 of the same year. He made a brief allusion to certain "very vague proposals afloat—vague and not, I think, very well-informed proposals—for the foreign institution called the referendum." He saw "the strongest objection" to any such proposal on the grounds: (1) that the isolation of this device from the whole range of British political feeling made its use well-nigh impossible; (2) that it was inconsistent with, and destructive of, parliamentary government; and (3) that it would come into play only when a Liberal government was in power. In the subsequent discussion the prime minister's position on the subject was scarcely challenged, except in

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a speech from the Conservative side by Lord Robert Cecil, who definitely avowed himself a believer in the referendum and advocated its use on petition of one-fourth of the electorate to test the feeling of the country if the House of Lords refused to check some great legislative experiment that might be carried by the Commons. The contingency that was in Lord Robert's mind is easily understood when one remembers that, though a Conservative, he is a free-trader. In the press the only journals, in addition to the one already named, that had much to say on the matter were two weekly papers, the *Spectator* advocating and the *British Weekly* opposing the plan. On the whole, the "practical" man whether he were a Conservative or a Liberal, treated the subject as a mere fad of doctrinaire or academic politicians.

The rejection of the budget in the upper house in November, 1909, advanced the conflict to a further stage. Even then the referendum received only the slightest attention. On March 29, 1910, Mr. Asquith, in opening the general debate on the relations between the two houses, argued briefly against it as a solution of the problem, though he reserved the question of its "appropriateness and practicability" as "possibly the least objectionable means of untying the knot when some extreme and exceptional constitutional difficulty arises." Mr. Balfour, immediately following him in the debate, ignored the referendum altogether. Mr. Redmond, the Irish leader, showed some apprehension lest the prime minister's reservation might mean an intention to propose a referendum instead of going to the Crown for the use of the royal prerogative; and he announced that he would oppose any such course. In the rest of this discussion and in the course of the subsequent debates, lasting for several days, on the specific proposals of the government, nothing more was heard of the subject. Nor is there a word to be found about it in the two speeches in which the party leaders issued manifestoes to their followers, namely, Mr. Balfour's at Nottingham, on November 17, and Mr. Asquith's at the National Liberal Club, on November 19.

It was in the eleventh-hour discussions in the House of Lords itself, immediately before the general election of 1910, that the

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referendum first approached the status of a question of practical politics. On November 16, in a preliminary review of the general situation, the Marquis of Lansdowne quoted what Mr. Asquith had said of the possible use of the referendum in exceptional cases and regretted that the suggestion had not been followed up by a discussion. In moving the second reading of the Parliament Bill on November 21, the Earl of Crewe contented himself with a brief incidental allusion, questioning whether the establishment of the referendum in England would really lead to moderate legislation. On November 23 Lord Lansdowne brought forward a plan of his own as an alternative to the policy of the government. He proposed that differences between the two houses should be settled in joint sittings, "provided that, if the difference relates to a matter which is of great gravity and has not been adequately submitted for the judgment of the people, it shall not be referred to the joint sitting, but shall be submitted for decision to the electors by the referendum." In his speech he recognized the difficulty of drawing up a formula which should discriminate grave questions from those which stopped short of being grave, but he believed nevertheless that the house would agree that there were certain "capital questions" which required greater safeguards than would suffice for ordinary routine legislation. Among them were proposals for altering the parliamentary legislative machine, and such questions as compulsory military service and the disestablishment of the Church. He suggested that a parliamentary tribunal might be set up which would decide in each case whether a particular measure required this special treatment. He added:

> I venture to say, speaking for myself, that, if this procedure by referendum were to be introduced, I should hope to see it introduced not only for the sake of settling differences between the two houses of Parliament, but also for the purpose of affording, if need be, a check upon legislation even when both houses are agreed.

From its starting-point in the Marquis of Lansdowne's speech we may now trace the history of the referendum as an issue in British politics. It will be most convenient first to note the successive developments of the form of the proposals (mainly

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in response to inquiries for further information), postponing for the time a summary of the arguments used *pro* and *con*.

Lord Crewe, immediately following the opposing leader on the same night, assumed that a tariff could not be put into a referendum, though this would be a question of much greater gravity than many constitutional questions which might be so submitted. Lord St. Aldwyn (the Sir Michael Hicks-Beach of earlier days) thought a tariff need not be excluded from the scheme. Its details, no doubt, could not be referred to the people, but what could be easier than to put the question: "Will you have colonial preference, and will you have a tax on manufactured goods?" He would have a joint committee of both houses, presided over by the speaker, to prepare the proper questions to be set before the country. The lord chancellor (Lord Loreburn) admitted the possible use of a referendum in exceptional cases, as, for instance, to settle the claim of women to the vote, with respect to which neither party was agreed. But in such an instance it should be brought into operation by special act of Parliament applicable to the particular question, and not by introducing the referendum into the general constitutional system of the country. Several other speakers discussed the advantages and disadvantages of a referendum, but without adding further definiteness to Lord Lansdowne's scheme.

From the House of Lords the question was now carried into the electoral campaign; but at first only a minor interest was taken in this particular phase of the general question. Speaking at Hull, on November 25, Mr. Asquith dealt with the alternative to his own policy as outlined by Lord Lansdowne, and pressed for further information on various points. As to the referendum, he demanded that his opponents should "condescend to particulars," and state "what is the criterion and what are the categories of questions of great gravity." The electors were entitled to ask what were the subjects in regard to which Parliament was to be deprived of its omnipotence and compelled to resort to a plebiscite. He presumed that Irish home rule was a "question of great gravity." Was disestablishment? (This question, as a previous paragraph shows, had already been

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answered by Lord Lansdowne in advance.) Was the abolition of plural voting? Above all, and most important of all, was the question of the tariff? (One must remember in this connection that tariff reform had been declared by Mr. Balfour a few days before at Nottingham to be "the great constructive policy" to which his party stood committed.) At Reading, on November 29, the prime minister repeated his interrogatories, asking especially whether tariff reform, as a question of great gravity, was to be submitted to a referendum. And if so, who was going to frame the question, and how was it going to be put?

That same evening Mr. Balfour was addressing a huge meeting of nearly 10,000 people in the Royal Albert Hall, London. He quoted with approval Lord Lansdowne's suggestion of a joint sitting as the normal method of solving deadlocks, together with, "in more serious and important cases, a reference to the judge which is above both the House of Commons and the House of Lords, which is above both first chamber and second chamber." After explaining why he supported this proposal, he took up Mr. Asquith's challenge, claiming, however, that he might fairly be entitled to ignore it, inasmuch as the question before the country was the solution of deadlocks between the two houses, and to this problem tariff reform was quite irrelevant. The raising of the point by his opponents was "simply an expedient for wriggling out of a proposal which gives the people their just claim to come in as arbitrators in great cases of difference of opinion between the two chambers of the legislature." Nevertheless, he frankly admitted that tariff reform was a great change; and "I have not the least objection," he continued, "to submitting the principles of tariff reform to a referendum." This declaration was received (according to the report in the *Daily Telegraph*) with "a terrific roar." Many in the audience rose from their seats, and cries were heard: "This has won the election." The enthusiasm was renewed when Mr. Balfour challenged the Liberals to respond to what he had just said by offering to submit home rule to a referendum.

This utterance was generally regarded as one of the most sensational in recent political history. It was reported in the papers on a Wednesday morning; the first, and some of the

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most critical, pollings were to take place on the following Saturday. The new turn things had unexpectedly taken exhilarated Mr. Balfour's followers and proportionately depressed his opponents. Some cautious persons argued that his words did not really bind him very stringently. The vagueness of his reference to "principles" was emphasized, and it was pointed out that "I have not the least objection to submitting" was not exactly equivalent to "I undertake to submit." Still, it was in the sense of a definite pledge that this utterance was interpreted in the campaign speeches and campaign literature on Mr. Balfour's own side. Voters were told everywhere that Mr. Balfour had promised that tariff reform should not become law, if he were placed in power, without being first approved by a popular referendum. This promise was especially commended to wavering free-trade Unionists, to convince them that the present fiscal system would not be endangered by their supporting the Unionist party. For several days the *Times* published columns of letters from prominent free-trade Unionists, who declared themselves satisfied by Mr. Balfour's pledge and urged other electors holding the same views to join them in voting Unionist. According to Sir William Forwood, one of the leading Unionists in the north of England, it is "difficult to describe" the effect of Mr. Balfour's speech on the Liverpool and Manchester exchanges. "Men seemed to feel," he says, "as if a great weight had been lifted off their shoulders, and to breathe freely again." Sir William specifies one Lancashire seat which this declaration "certainly won" and others which it helped to win or where it greatly increased the Unionist majority. It came, he says, as "an enormous relief" to Unionists to feel that, after all, the country would be consulted before a tariff-reform measure would be put into operation.[1]

As the elections proceeded, Mr. Balfour made more clear his intention as regarded submitting the "principles" of tariff reform to a referendum. At Reading, on December 1, he proposed that the question should be: "Are you in favor, or are you not, of our scheme, our general scheme, of tariff reform?" In the

[1] It would be easy to quote utterances of Liberal workers to the same effect; but on so controversial a question it is safer to confine oneself to Unionist testimony.

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Hyde division of Cheshire, on December 9, he spoke of the poll, on such subjects as tariff reform, as to be taken "after the people have seen it argued out, after the principles and aims have been stated by competent representatives in the House of Commons and in the second chamber." And at Dartford, on December 12, he declared, without any circumlocution, that what he proposed to put before the people, to be decided aye or no, would be a "tariff reform budget."

Another item was added to the referendum program by Mr. Balfour's statement, in reply to a correspondent, that there would be no plural voting. Mr. Asquith, speaking at Bury St. Edmunds on December 12, welcomed this admission and asked for further information as to the mechanism of the new method. How were they going to apply the ballot to it? Was the vote to be taken, as some people seemed to think, by post-card? How were the provisions of the Corrupt Practices Act to be applied? And how was the elector to be protected against "the organized influence and pressure of wealth?"

Mr. Balfour's readiness to submit a complete budget to the popular vote caused some uneasiness in the minds of certain of his principal lieutenants. Mr. Austen Chamberlain and Mr. F. E. Smith, for instance, both took the position that this pledge applied only to the December election and would cease to bind the party if that election turned against them.

On March 2, 1911, a referendum proposal attained, for the first time in England, the dignity of being embodied in a parliamentary measure. Lord Balfour of Burleigh, a distinguished Scotchman who resigned from Mr. Balfour's cabinet in 1903 rather than join the tariff-reform movement, introduced in the House of Lords on that date a bill that was to be entitled the "Reference to the People Act." It provided for a referendum to solve deadlocks between the two houses, and also to decide the fate of any bill which had passed both houses but had been challenged by 200 out of the 670 members of the House of Commons. No discrimination was to be made as to the class of measures that should thus be referred to the people. The poll was to be taken throughout the kingdom on one day, and there was to be no plural voting. Voters were to place a cross

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under the word "yes" or "no" according as they did or did not wish to ratify the bill referred to them. If the total affirmative vote exceeded the total negative vote by not less than two per cent, the bill in question should become law. This bill was read a first time without a division. It came up for second reading on March 28 and was made the subject of a two days' discussion. The debate showed that the intervening period of reflection had somewhat abated the enthusiasm which the Conservative peers had shown for the proposal during the election struggle. The opinion of the rank and file found expression in the remark of Lord Willoughby de Broke, that he was one of those who supported the referendum at the general election, but he was not quite sure that he was as much in love with it as a month or two ago. Other speakers on the same side of the house showed themselves in a critical mood; and Lord Lansdowne, the official leader of the party, while declaring his belief in the principle of the referendum, confessed that the bill would take them further than he was prepared to go. Nothing, he said, would induce him to vote against the bill, but he would be reluctant to vote for it. He therefore suggested that, after a full and prolonged discussion, the mover should allow time for the further development of the political situation before a division was taken. This advice was taken; and the debate, with the full consent of Lord Balfour, was adjourned *sine die*.

In the House of Commons the question received incidental discussion on the first reading of the Parliament Bill on February 21. It came up more definitely on April 26, when that bill was passing through its committee stage. Mr. G. Cave, K. C., proposed as an amendment that when a Commons bill had been rejected a third time by the Lords it should be referred to the people. As in Lord Balfour's bill, no distinction was to be drawn as regarded the character of the measure—whether constitutional, financial or otherwise. But Mr. Cave did not propose, like Lord Balfour, to bring this method into use when a bill passed by a majority of each house was challenged by a one-third minority in the Commons. It was to apply, too, only when a Commons bill had been thrice thrown out by the Lords, and not, as in Lord Balfour's scheme,

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after the first rejection. The discussion of Mr. Cave's amendment and the vote on it proceeded practically on party lines. The government pronounced against it and the opposition in its favor. Its most prominent supporter was Mr. Balfour, who stated in the course of his speech that, although he thought the debate on Lord Balfour's bill in the other house very valuable, that bill contemplated the use of the referendum "far in excess" of anything he should himself advise. Mr. Cave's amendment was rejected on a division by 286 votes to 164.[1]

At the moment at which this article is written—at the beginning of the committee stage of the Parliamentary Bill in the House of Lords—there is in immediate prospect a discussion of another referendum proposal, which is entirely different from either Lord Balfour's or Mr. Cave's. Lord Lansdowne has given notice of an amendment requiring the approval of the people by referendum as a condition precedent to the enactment of any bill: (*a*) which affects the existence of the Crown or the Protestant succession thereto; (*b*) which establishes a national parliament or a national council in Ireland, Scotland, Wales or England, with legislative powers therein; or (*c*) which has been referred to a joint committee of the two houses and in their opinion raises an issue of great gravity upon which the judgment of the country has not been sufficiently ascertained.

A summary of the principal arguments that have been advanced on both sides, during the brisk discussion that has continued intermittently ever since the referendum was brought into the forefront of public controversy, will presumably be most useful if chief attention is paid to the arguments which deal with the applicability of the referendum to English conditions, and if the more general arguments, which have often been presented and are readily accessible in the literature of the subject, are for the most part ignored.

The first argument to be noted is that put forward in the

[1] It is scarcely necessary to suggest that any student of the subject who wishes to go into it more fully will find ample material in the above-mentioned debates, as reported either in *Hansard* or in the London *Times*. The speeches of Mr. Balfour and Mr. Asquith, on April 26, were especially interesting for their comments on the development and significance of representative government.

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House of Lords debate on November 10, 1910, by Lord Curzon, who commended the referendum as "essentially democratic in character." Its basis, he said, was the belief, to which they all gave expression in their public utterances, that in the last resort they accepted the will of the people. Accordingly, "Trust the people" was one of the favorite mottoes on the walls of Conservative meetings during the election, and the doctrine was "rubbed in" in scores of editorials and speeches.

The need of a direct manifestation of the popular will was declared to be urgent in view of the insufficiently representative character of Parliament, as at present constituted. Stress was laid upon the confusion of issues at the time of a general election, and the consequent difficulty of getting a clear decision on any one subject. A referendum would isolate a particular issue. In the words of Mr. Balfour, at the Albert Hall:

> It is perfectly easy to see, after the referendum is over, on what the referendum was; whereas after a general election every man says that it was upon the subject in which he is interested, if the election has gone in his favor, upon the subject in which he is not interested, if the election happens to have gone against him.

Lord Lansdowne further pointed out (November 23) that, while a member of Parliament might fail to represent the opinions of his constituents upon questions that were prominent at the moment of his election, he was still more likely not to represent them truly upon new questions that might arise during a Parliament which lasted five or six years. In such circumstances a vote of the House of Commons might be no real reflection of the views and wishes of the people of the country, and it was therefore "eminently desirable" that advantage should be taken of the opportunity of a referendum.

Other merits claimed for the referendum by Mr. Balfour were that it decided important questions without carrying with it a change of government (on this point, something will have to be said later), and without the personal bitterness that was inextricably involved in a contest between two competitors for a seat. Various speakers urged the point that the referendum had worked well in other countries, notably in Switzerland and

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in America. Mr. Balfour (December 1) called attention to the "admirable use" that had been made of it in Australia, where it was "a living and effective part" of the constitution of the new Commonwealth, and to its proved value as used by local authorities and trade unions in England itself.

The arguments on the other side need to be separately considered, according as the proposal is (1) to use the referendum merely for the settlement of deadlocks between the two chambers or (2) to bring it into play for the decision of other questions also.

(1) First, then, let us note the objections made to the proposal to employ the referendum when Lords and Commons disagree, and on such occasions only.

Its use for such a purpose would involve all the risks of an untried experiment; for the example of other countries casts no light on its value as a means of solving differences between two chambers of a legislature.

For such a purpose, moreover, it would be ineffective unless employed in a form that would deprive it of its alleged simplicity. In England deadlocks arise more often from the amendment than from the rejection of a Commons bill by the Lords. In such a case there would be at least six opinions, each possibly held by a large body of voters. There would be: (*a*) those who want the original bill, if possible, but are willing to accept the amended bill rather than nothing; (*b*) those supporters of the bill who prefer that it be dropped if it cannot be carried in its original form; (*c*) those who prefer the amended bill, but are willing to accept the original bill rather than nothing; (*d*) those who want the amended bill and will not accept the original bill at any price; (*e*) those who object to both bills, but, if one or other is inevitable, prefer the original; and (*f*) those who, similarly objecting to both, prefer the bill as amended. A member of Parliament belonging to any one of these classes can further his favorite policy by judicious action at the various stages through which a measure has to pass in going through his own house. But whether the question as submitted in the referendum takes the form: "Are you in favor of the Commons bill?" or "Are you in favor of the Lords

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bill?" the giving of a plain "aye" or "no" answer will evidently come very far short of expressing the mind of the country.

Finally, if limited to this purpose, the use of the referendum would be one-sided and unfair. In present circumstances deadlocks occur only when bills passed by a Liberal majority in the Commons have to run the gauntlet of the permanent Conservative majority in the Lords. A referendum, with whatever expense and trouble it might involve, would thus be used only to check, or at least to delay, Liberal legislation. The measures passed by a Conservative House of Commons would have no such ordeal to undergo.

The last of these objections is obviously fatal. It is generally recognized, on the Conservative as well as on the Liberal side (as by the *Spectator* in its articles, and by Lord Lansdowne in his speech of November 23), that if Liberal bills from which the Lords dissent are to be subjected to a referendum, an opportunity must be given to the Liberals to challenge the more important Conservative bills with which the Lords agree.

(2) This proposal—to give the referendum a place in the general legislative machinery—arouses a new set of objections. It is strongly urged that it would undermine the dignity and responsibility of Parliament and degrade members into mere clerks. Speaking on December 12, Mr. Asquith showed how the mere suggestion of a referendum had already begun to work. He quoted the answers of a candidate for a Scottish seat who was being "heckled" a few days before. A gentleman in the audience had asked: "What about the disestablishment of the Church of Scotland?" and the candidate had replied: "I am opposed to that unless it is referred to the people by means of a referendum. I should not, of course, oppose myself to a poll of the people on that or any other subject." If the representative system, said Mr. Asquith, was to be transformed into a succession of polls of the people on every controversial issue of real magnitude, that great historical institution, the Mother of Parliaments, would be degraded into something no better than a debating society, and only "the most contemptible people in the country" would be willing to become members of it. On the other hand it was argued by Lord Curzon (November 24)

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that the referendum would stimulate the sense of responsibility in individual members of Parliament, because they would feel that they might be called to account by a poll of the people at no short date. That, he thought, would go a long way to prevent log-rolling and wire-pulling. In his Albert Hall speech Mr. Balfour also dealt with the question of the responsibility of Parliament. He asserted that there was not at present "much responsibility of a very important or valuable kind to be destroyed by any form of reference to the great popular will." This could be seen, he said, by examining the nature of the "hierarchy" by which the country was at present governed. The country was governed by Parliament, which in its turn was governed by the cabinet, and this was governed by its most noisy member, who was himself governed by Mr. Redmond, and he was governed by Mr. Patrick Ford and the other subscribers to his fund. Mr. Balfour consequently dismissed the idea that there was any "sacred responsibility" which would be destroyed by a reference to the people.

A point deserving special attention is the difference between the English and other constitutional systems in the relation of the cabinet to legislation. In countries where the referendum is at present in operation the burden of carrying through legislation does not lie on the executive. The one known exception is the Australian Commonwealth; and there the referendum is employed only for changes in the text of the constitution. The crux of the whole matter seems to be the question: would the cabinet have to resign if an important bill that it had carried through the Commons were rejected by the popular vote on a referendum? Mr. Balfour says there would be no such necessity, and he is supported by the *Spectator*; but one of his own colleagues, Mr. Austen Chamberlain, holds that on some subjects, at least, such a defeat would compel resignation. Now, if resignation would not necessarily follow, it is clear that one result of the innovation would be a sweeping-away of the old doctrine of cabinet responsibility; and this would be one of the most radical changes in the English system of government that it is possible to imagine. Suppose, on the other hand, that defeat at a referendum on an important question involved the

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resignation of the cabinet. In such a case the main advantages claimed for the referendum would wholly disappear. The issue would not be isolated. People would vote aye or no not so much according to their opinion on the particular subject proposed to them as according to their desire that the ministry should stay in or go out. And what would follow the resignation of a ministry which was defeated at a referendum but still retained a majority in the House of Commons? The opposition leader would be called in to form a ministry; but he would not be able to control the House, so there would have to be an immediate general election. The referendum, therefore, instead of saving the country a general election, would have precipitated one.

It has been argued that a corollary of the adoption of the referendum as a general instrument of government would be the abolition of the House of Lords. The main function of that house, as recently expounded by its most prominent defenders, is to check hasty legislation which has been carried through the Commons but which there is reason to believe does not represent the will of the country. The referendum, as an automatic check, would make a second chamber a superfluity.

A special consideration arises if the referendum is proposed to apply to constitutional changes in particular, whether only in case of a deadlock between the two houses or in other cases also. In order to determine what proposed measures involved constitutional changes, it would be necessary to reduce to writing a considerable part of the unwritten constitution, and to establish some tribunal to decide what bills should be considered as proposing virtual changes of the constitution.

On the general question there are two further points to be noted. Bishop Gore, of Birmingham, speaking in the House of Lords on November 24, opposed the referendum as swallowing up local representation and imperiling local interests. At present the opinions of Wales or of Lancashire or of agricultural counties were allowed weight in discussions that concerned their interests, but the referendum would make an end of this. It would therefore lead with very great rapidity to the application of the principle of home rule all round. Lord Loreburn,

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in a letter to a correspondent, has illustrated this argument by a concrete instance:

> Let me suppose the question of Scottish disestablishment. What does the English electorate know of the Presbyterian establishment in Scotland? All the weight that now attaches to the opinion of the locality expressly affected by a bill would be effaced, and the question ruled aye or no by the votes of men who are untouched by the proposal.

The matter of the trouble and expense involved in taking a referendum has been prominent in articles and speeches, but the most wildly different estimates have been made. According to Mr. Balfour, one of the arguments for the referendum is that it could be put into operation without such expense, disturbance to business *etc.* as accompany a general election. According to prominent speakers on the other side, a referendum would be simply "a general election without candidates," and the turmoil and the outlay upon propaganda, as well as the official costs of taking the ballot, would be very much the same as at elections of the ordinary type. This would be the case, at any rate, whenever the subject at issue was one of general interest or involved the fate of the ministry. If, on the other hand, the measures submitted did not arouse an interest equal to that of a general election, the polling would be small and the referendum would in so far fail to achieve its object.

If, in the above summary, disproportionate space appears to have been given to the arguments on the negative side, the explanation is that, though the discussion was conducted at high pressure through several weeks, only the opponents of the referendum came to close quarters with the question of its applicability to the existing governmental system of the United Kingdom. Its advocates relied almost entirely upon those more general arguments which can be adduced in its favor without regard to its pertinence to the needs or conditions of any country in particular. The various statements made by Mr. Balfour, for instance, on the taking of a referendum on tariff reform, illustrate the extent to which the official Conservative policy on the question was extemporized in the heat of the conflict. "You have not thought out your substitutes," said Lord Morley of Blackburn, in expressing his "amazement" at the "levity"

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with which during the last few years the Conservative leaders in the House of Lords had discarded certain historic features of the English constitutional system. His remark applies with much force to the history of the referendum proposals. At present, roughly speaking, public opinion in England regarding the referendum divides on party lines. The average Conservative supports it, and the average Liberal opposes it. When a new issue is raised a few days before an election there is a natural disposition to accept the guidance of the leaders of one's own party. But on either side there are beginning to be heard a few voices critical of the orthodox party platforms. Some Conservatives, for instance, are warning their friends that in operation the referendum might be a two-edged sword. True, a referendum would probably kill Irish home rule or Scottish disestablishment or Welsh disestablishment; it would certainly confirm a tariff bill (if such a bill could be framed) which would protect everything one sells without increasing the price of anything one has to buy; but what would be the result of referenda on bills to a make a radical change in the system of land tenure, or to begin the payment of old-age pensions at sixty instead of seventy, or to raise the tax on incomes of £10,000 and over to ten shillings in the pound? And on the Liberal side there are some who, while believing that the referendum would in the main work out to the hindering of all reforms that did not appeal to the pockets of the electors themselves, are still anxious to prevent their own party from committing itself definitely to a hostile attitude. It should be noted that Mr. Asquith himself, while taking a strong anti-referendum line, has been careful to say nothing inconsistent with his earlier reservation that in some emergencies the referendum might be useful. But whatever may be the modifications in party tactics with relation to this question, one outstanding fact emerges from the hubbub of recent discussion. The referendum, if not yet acclimatized in England as a method of government, has at any rate been acclimatized as a political issue. Lord Lansdowne's scheme and the controversy that has ensued have made it a "question of the day."

HERBERT W. HORWILL.

LONDON, ENGLAND.

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"PEOPLE'S RULE" IN MUNICIPAL AFFAIRS[1]

DURING the past year the distinguished ex-presidents of two American universitieshave been devoting not a little energy to promulgating the doctrine that the cure for democracy is more democracy. Governor Wilson's inaugural message commended to the people of New Jersey legislative methods and measures which Oregon has been subjecting to severe tests, and his leadership has already been largely effective in securing similar action in his own state. Dr. Eliot, in the Fourth of July oration—which has been a feature of Boston's celebration since the first anniversary of Independence Day—chose as his theme the need of a new declaration of independence. He insisted that political freedom is of limited value, unless it be accompanied by genuine social and industrial freedom. Democracy, he declared, has proved itself in the United States to be the most patient and conservative of governmental methods. And in recent years he has been arguing that, in local government especially, the newer institutions of democracy, the initiative, the referendum and the recall, which are so often denounced as ultra-radical, are in fact instrumentalities suited to the work of patient and conservative melioration.

In the March number of this periodical, an account was given of the campaign of 1910 in Oregon, and of the way in which the voters handled the complicated task presented by the ballot in the state election held in November.[2] The present paper is a supplementary study of the workings of the initiative and referendum, not in state legislation, but in dealing with the near-at-hand problems of local self-government, as illustrated in the municipal election held in Portland, Oregon, June 5, 1911.

Portland is a thriving city of well over 200,000 inhabitants.

[1] The writer wishes to acknowledge his indebtedness to Mr. George A. Thacher, of Portland, Oregon, for most of the material used in the preparation of this paper. The election discussed is that of June 5, 1911.

[2] G. H. Haynes, "'People's Rule' in Oregon," POLITICAL SCIENCE QUARTERLY, vol. xxvi, pp. 32–62.

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In the last census period its population increased 129.2 per cent, a rate exceeded by but four cities in the United States. It is the county-seat of Multnomah county, where direct legislation has seemed to find its most congenial soil. In such a community, what sorts of questions do the people take into their own hands? How much interest does the average voter take in them? How successfully do the voters discriminate between the sensible and the freakish, between the prudent and the improvident?

The election of city officers presented no small task to the Portland voters on that day. Fifty-four names of candidates appeared upon the ballot, the individual citizen being called upon to vote for the filling of eleven offices. The ticket was headed by the names of five candidates for the mayor's chair. The result of the ballot for mayor was as follows:

A. G. Rushlight	Republican	13,662
Joseph Simon	Independent	8,835
G. H. Thomas	Democrat	3,418
C. H. Otten	Socialist	1,637
J. A. Harrison	Prohibition	452

Of these, Mr. Simon is the present mayor. Ten years ago he was in the United States Senate. In the recent campaign he refused to announce himself as a candidate before the primaries. Later he was put forward by a petition signed by nearly 5000 voters, on a platform of securing immediately a commission form of government for Portland, and so ran as an independent. Though he met with heavy defeat, the cause which he represents is advancing: the city council, since the election, has set a date early in January, 1912, for a special election which will decide the acceptance or rejection of commission government for Portland. A committee of fifteen citizens is now at work on the scheme. One point is considered settled: the proposed charter will provide for the election of a mayor and six commissioners, among whom the seven departments of the city's administration will be distributed. As all the newspapers are supporting the plan, it is probable that within a few months Portland will join the ranks of commission-governed cities.

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Following the list of candidates on the ballot were twenty-three distinct projects of direct legislation, placed there by three different processes.

I. There were thirteen proposed amendments of the city charter, submitted to the voters by the city council. For good or for ill, the people of Oregon have attained a fuller degree of home rule for their cities than is to be found in any other state. The city drafts, enacts and amends its own charter; but all proposals relative to the charter must go before the people for their acceptance. The council's submission of these thirteen amendments, therefore, did not imply (as the submission of referenda by legislatures sometimes does) a disposition on the part of the people's representatives to evade responsibility. They were instances of the obligatory referendum—a part of the constitution-making process for which Massachusetts set the precedent in 1780, and which has been introduced in most of our states. Of these proposed amendments, six were adopted and seven rejected.

II. Eight measures were placed upon the ballot by initiative petition. Of these, four were proposed amendments of the charter, two of which were adopted. The other four were ordinances, three of which were adopted.

III. The people's surveillance of their council's work is evidenced by the fact that two ordinances which had been passed by the council were brought to the test of a referendum, ordered by petition of the people. Both of the measures, thus weighed in the balance, were found wanting.

It is significant that, in this ambitious and rapidly-growing city, the largest group of proposals consisted of charter amendments authorizing bond issues for municipal improvements. For ready comparison, the statistics may be grouped as follows:

(1) $1,400,000. For a high bridge across the Willamette River.
Rejected: 13,941 to 11,630.

(2) $200,000. For the acquisition of land for, and the construction of a building to be used for a municipal jail, municipal court, police headquarters and emergency hospital.
Adopted: 18,622 to 6047.

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(3) $250,000. For the acquisition of a tract of land, "Council Crest," to be used for park purposes.
Rejected: 17,598 to 7076.

(4) $600,000. For the acquisition of land for, and the erection and maintenance of a public auditorium.
Adopted: 13,915 to 10,771.

(5) $75,000. For the acquisition of the necessary accessories and the establishment of a municipal garbage-collecting system.
Adopted: 14,808 to 9311.

(6) $1,000,000. For "constructing a municipal paving plant, prohibiting the use of patented articles or processes for street paving, and providing that hereafter all streets be improved only through said municipal paving plant."
Rejected: 15,712 to 8,448.

These figures make it plain at a glance that the great mass of the voters were not marking "yes" or "no" by mere force of habit: that they were neither for nor against large bond issues for improvements in general, but that, whether wisely or not, they showed decided discrimination between different proposals. As to the measures in particular: (1) The bridge is thought to be not imperatively needed, in view of other demands upon the tax levy. (2) On the other hand, the present jail and municipal court buildings are declared by Portland citizens to be a disgrace to the city. It was, then, to meet a real need that the bond issue for the new building was called for; and of all the measures on the ballot, this received the largest majority in its favor. (3) The tract in question is said to be well suited to park uses, but the expenditure seemed unwarranted in view of other large demands. (4) The large sum voted for a public auditorium is explained by the fact that the city has been "singularly poverty-stricken in the matter of places for public meetings." It accords with the spirit of "people's rule"—so both its friends and foes will agree—that lavish expenditure should be made for a place of public assembly, Portland's "Faneuil Hall." (5) A better system of garbage disposal was needed and it seemed necessary to issue bonds for its installation. (6) It is significant that, of the six proposals for a bond issue, this alone was placed on the ballot by initiative petition, without having received the sanction of the city council. Critics did not hesitate to allege that it showed some of the character-

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istic weaknesses of the initiative process. Its adoption would have committed the city to an immensely costly experiment; and examples of the successful operation of such municipal undertakings elsewhere are not numerous. The administration of the paving plant and its relation to the general scheme of the city's government were not thoroughly worked out. Moreover, the proposed prohibition of the use of any patented material or processes might have prevented the city from obtaining the best street construction. It is creditable to the voters that they gave this raw proposition time to ripen.

A second group of charter amendments, all of which were submitted to the voters by the city council, authorized the creation of a pension and relief fund for each of three divisions of the city's employees and provided a board of trustees and a tax levy for each fund. Apparently from mingled humanitarian and demagogic considerations, the council had caught the pension-granting habit; and each successive measure was more recklessly drafted than its predecessor. The voters' verdict is the more significant.

(1) Pension and relief fund for disabled, infirm and dependent members of the fire department, and the widows and dependent children of deceased firemen.
Rejected: 14,460 to 10,817.

(2) Pension and relief fund for disabled, infirm and retired members of the police department, and for widows and dependent children, under the age of sixteen years, of deceased policemen.
Rejected: 17,517 to 7540.

(3) Pension and relief fund for the benefit of members of the street-cleaning department, who have served in such capacity for twenty years or more, and for the benefit of the widows and dependent children of deceased members.
Rejected: 19,546 to 5004.

This last ballot title contained no suggestion of any disability or of any minimum age of retirement.[1] The mere rendering, for

[1] The proposed amendment was somewhat more cautious than its title indicated, especially in the fact that the pension fund was to be made "contributory," each man paying monthly into the fund one per cent of his salary. But, upon the written application of any man—regardless of any disability—who had served twenty-five years as an active member of the department, the trustees were to be obliged to retire him upon an annual pension amounting to half the salary he received the year prior to his retirement.

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twenty years, of the proverbially efficient, skilled and strenuous service of a street-cleaner would, so far as the title indicated, make him eligible for a pension at the age of forty-five or under. "Veterans" with such an assured income would prove highly eligible suitors; but no minimum period of marriage was prescribed before a widow's pension should be allowed. The council which submitted this charter amendment to the voters might with profit have meditated upon the history of federal pensions, or even upon the change of heart undergone by the trustees of the Carnegie Foundation for the Improvement of Teaching in the matter of service pensions.

What grade of compensation will a popular vote accord to officials whose positions require exceptional skill or training? The question always puts a strain upon democracy, as—to cite an analogous situation—it puts a strain upon "productive co-operation" in industry. Will the rank and file consent to the payment of salaries high enough to ensure efficient service? In Massachusetts, town-meetings were so parsimonious in fixing the salaries of superintendents of schools that the state had to step in and prescribe a minimum. At this recent election in Portland, there came before the voters two charter amendments, proposed by the council, relating to the salaries of officials: that of the city attorney was to be $300 a month; that of the city engineer was to be fixed by the council, but should not be less than $3000 a year. Both proposals were rejected: the first, 13,503 to 10,577; the second, 11,953 to 11,854. It is to be feared that these majorities reflect something of the "penny-wise, pound-foolish" attitude which has often been noted as characteristic of popular votes upon such questions. On this very ballot were half a dozen proposals which indicate that Portland needs to have at her command legal advice of a high order. The closeness of the vote as to the other salary shows that many voters appreciated that the city's engineering problems call for high-grade service. There were many who believed, as one Portland citizen said, that "Portland's situation, with a navigable river running through the heart of the city, with bluffs and gulches on both sides, would doubtless make an engineer who was worth $10,000 a year the most economical officer in the city, if he were paid that sum."

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A measure showing a degree of civic pride was the charter amendment providing for the levying of a tax, not to exceed one mill on each dollar of the assessed value of the property in the city, to be used for the maintenance of the street-cleaning department. This was adopted: 12,786 to 10,021.

Two other revenue-raising ordinances, proposed by initiative petition, aimed to secure to the city a part of the income derived from natural monopolies. In practically identical language, these provided for the levying of a license on the gross receipts of persons and corporations engaged in the business of selling (1) natural or manufactured gas, or (2) electricity, for lighting, heating, power or other commercial purposes. These measures were of dubious merit, for they provided no effective regulation of the services which they proposed to tax. But both were adopted: the former, 13,655 to 10,551; the latter, 13,370 to 10,553.

The same disposition to curb monopoly, which came to light in the proposed prohibition of the use of patented road materials or processes and in the levying of these license taxes, is seen in another form in two measures which sought to limit the discretion of executive officers and to compel competition. The first of these was a charter amendment, submitted by the council, providing that there be required "two or more sets of plans and specifications for a proposed sewer, each set of which shall specify a different class or kind of sewer pipe and the estimates of the work to be done and the probable total cost of each style of construction." This was adopted: 15,036 to 8080. The other, proposed by initiative petition, provided

> a general change in street improvement proceedings, taking from the Executive Board and giving to the Council power to determine the lowest responsible bidder for improvements, selecting the kind of improvement to be made after bids are received for two or more classes of improvement, requiring that three-fifths in area of property in each assessment district shall be necessary for a legal remonstrance.

This was adopted: 11,866 to 10,729. On the surface, these measures are apparently intended to prevent collusion and graft. Yet any capable engineer would insist that in many a

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problem of sewer or street construction only one "class or kind of sewer pipe" or one "kind of improvement" could be considered within the range of intelligent choice, and that the forcing of the preparation of plans and estimates for other "classes" or "kinds" would be not only costly but futile as a preventive of possible graft. Indeed, it may be questioned whether forcing into consideration at least two different kinds of improvements, from which selection must be made by a political body, might not conduce directly to the fraudulent acceptance of bids which otherwise could never have received any consideration. The adoption of these two measures apparently indicates distrust of the executive and engineering departments; but the teaching of American experience does not commend the transfer of such decisions as these to large, ring-ridden and responsibility-dodging city councils. It will be noted that the second of these measures combined three quite distinct propositions, as to the expediency of each of which the individual voter might find it hard to make up his mind.

Reaction against monopoly figured in yet two other measures, which concerned primarily the matter of street-car traffic. The first of these was an ordinance, proposed by initiative petition, providing that

> during certain hours each passenger of a street car operated in the City of Portland from whom a fare is demanded shall be furnished a seat in such car, and making it unlawful to demand such fare until a seat is provided, and making it unlawful during certain hours to permit any person to board or remain upon any street car in which no seat is available for such person.

The service rendered by the present street-car management has for years been notoriously inadequate. The first part of this measure apparently promised welcome relief for the "strap-hanger." In the last clause, however, the alert voter did not fail to discover the "joker" which would enable the company to continue its inadequate service; for the motorman could pass the irate citizen on the curb with the smiling reminder that the law would not allow him to take on another passenger, since all seats were full. This proposal was rejected: 17,022 to 8714.

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The other measure, also proposed by initiative petition, provided for a charter amendment, "creating a Public Service Commission, consisting of three members, regulating public-service corporations." This also had the appearance of a fit and proper measure of relief. But it must always be kept in mind that initiative petitions are never the spontaneous utterance of the "voice of the people." They start somewhere. They are framed and phrased by a very few individuals, who know what they want. It follows that, when an initiative or referendum petition is circulating, its heredity and early environment are always legitimate subjects for investigation. In this instance, Portland citizens remembered certain things. An act, from which much was hoped in the way of improvement of the street-car situation, was passed by the last legislature, extending the powers of the state railroad commission so as to give it jurisdiction in the matter of public utilities in Portland. But forthwith a referendum petition was filed, which had the effect of holding this law up until the general election of November, 1912. Then this charter amendment, providing for a local commission, was submitted by initiative petition. The voters knew that this project was of the same paternity as the referendum petition, by which the state law, passed in opposition to the local commission idea, was put in a condition of suspended animation for eighteen months. They therefore preferred to bear their present ills, rather than risk entangling state and city laws. So this project was rejected: 11,691 to 11,206.

A charter amendment of an apparently purely technical character, vouched for by the Taxpayers' League, provided that "hereafter all gulches shall be filled and paid for out of the Special Bridge Fund." This was adopted: 13,309 to 9936.

A commendable though belated regard for the conservation of the city's patrimony is seen in the charter amendment, proposed by initiative petition, providing that

> the title, rights and interest of the City of Portland in and to all water-front property and all landings, wharves, docks, highways, bridges, avenues, streets and other public places, shall not be divested for a distance of 2000 feet from any navigable water, or within 1000 feet of

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any depot or terminal yard; increasing vote in council required to vacate streets to three-fourths and approval of mayor.

Unfortunately, the city has already lost title to much of the property of the classes named, so that this measure is of the nature of "locking the stable door after the horse is stolen." It was adopted: 14,749 to 8198.

Æsthetic considerations, which appear to be more fully appreciated in some of the enterprising western cities than in the East, led to the adoption, 15,127 to 9504, of an ordinance, proposed by initiative petition, prohibiting "the building of wooden fences more than eight feet in height, and regulating the erection, construction and maintenance of bill-boards and signs in the City of Portland."

There remain to be considered the two ordinances which had been passed by the council but held up by referendum petitions, and which were now brought before the voters for their verdict. The first of these prohibited "the carrying, support or maintaining of banners on the streets, sidewalks or other public places in the City of Portland." Under this ordinance, a citizen might have been fined from five to ten dollars or jailed from five to thirty days for carrying the national flag on the street. This freakish measure was rejected: 16,626 to 8246. The other ordinance made it

unlawful for any person to attempt to induce or influence a person from entering any place of business within the City of Portland, or to refrain from purchasing merchandise in or performing service or labor in any place of business, and making it unlawful for any person to display any sign, transparency or banner in front of or in the vicinity of any business or employment for the purposes aforesaid.[1]

This measure was one upon which opinions might well be divided. It was rejected by a close vote, 12,854 to 12,098.

In passing both the anti-banner and the anti-picketing ordinances the council had declared that an "emergency" existed,

[1] This measure sought to ensure not only peace but quietness, for it declared that it should be "unlawful for any person, in or upon any public street, alley, or other public place in the City of Portland, to make any loud or unusual noise, or to speak in a loud or unusual tone, or to cry out or proclaim, for the purpose of inducing or influencing . . . any person to refrain from entering any works or factory."

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and that therefore those ordinances were to go into force and effect from and after their approval by the mayor. That approval had been given July 29, 1910, and August 31, 1910, respectively. The ordinary law or ordinance does not go into effect for a certain time after its enactment, and a referendum petition merely suspends its operation till the voters have passed upon it. But it is to be noted that these two ordinances had actually been in effect for nearly a year when they were annulled by popular vote.

One thing this election of last June has made very clear. When Portland voters face issues which concern the welfare of their own city, they do not forget or omit to vote. At this election, the average vote cast for and against these twenty-three measures was 83 per cent of the vote cast for candidates for the office which called out the heaviest vote. Moreover, considering the variety of these proposals, there was a surprisingly narrow range of variation in the total votes upon them. The largest vote, 25,736, was polled upon the ordinance compelling the street-railway company to furnish seats to all persons paying fares; while the smallest vote, 22,897, was polled upon the proposal to create a local public-service commission. The measure most heartily approved was that which authorized a bond issue for a new municipal jail and court house, which received a majority of 12,575; and the voters showed their good sense in casting the largest majority of all, 14,542, against the council's absurd proposition to pension men who had served twenty years in the street-cleaning department.

The statistics of this election afford convincing evidence of the widespread interest in government which direct legislation evokes. What is more, they give evidence of that patience and conservatism which Dr. Eliot predicates of democracy in America. Unquestionably several of the voters' verdicts were ill-judged. But that city may indeed count itself fortunate whose representative council, during the past year, has shown more intelligent discrimination between the wise and the unwise, the far-sighted and the short-sighted, the public-spirited and the selfish, than the Portland voters exhibited in the election of last June.

GEORGE H. HAYNES.

WORCESTER, MASSACHUSETTS.

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POLK AND THE OREGON COMPROMISE OF 1846

THOUGH his administration was for the most part brilliantly successful in the attainment of its objects, Polk has not been kindly dealt with by historians. The great event of his administration, the war with Mexico, is commonly regarded as a wanton and unjustifiable spoliation of a weak neighbor. The sinister shadow of sectional strife darkens the whole period, and the Whig and Abolitionist view of the president has passed into history. "Polk the Mendacious" is a Machiavelli of unheroic proportions, by fortuitous circumstances the protagonist of the forces of slavery. Historians have adopted the methods of the bar rather than of the bench and have condemned him unheard. The recent publication of his diary throws new light on many of the questions of his administration. The president's purpose in keeping this journal was to retain fresh in memory the events of the administration as they occurred day by day. There is no evidence that it was intended for publication. It is, therefore, a record not only of great importance but of far more value and trustworthiness than the accounts which public men have written for the perusal of others. It is difficult to see why, in a document of this kind, the writer should seek to falsify or distort the facts. A transcript of the diary was prepared for the use of George Bancroft, Polk's secretary of the navy, and is included in the voluminous Bancroft Collection of Manuscripts, but historians have made little use of it. The purpose of this paper is to review the question of the Oregon boundary, which was finally settled during the period covered by this diary, especially in the light of the information contained in that document.

For more than a quarter of a century before the election of Polk the respective claims of the United States and of Great Britain to territory west of the Rocky Mountains had formed a subject for diplomatic negotiation between the two governments. Whatever may have been the theoretical claims of either, negotiation had proceeded upon the basis of division

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and compromise. The atttitude of each government had been in the main consistent. The United States had proposed to extend from the crest of the Rocky Mountains to the Pacific Ocean the line of the forty-ninth parallel, already its northern boundary as far west as the mountains. Great Britain had offered as the boundary the same line from the mountains to its intersection with the Columbia River, thence the mid-channel of that river to the ocean. Neither government being disposed to make further concessions, the device of a joint occupation of the disputed territory was adopted in 1818, and was continued by a convention in 1827, to last until terminated by either government on a twelve months' notice.

In the early forties the settlement of the Oregon boundary became a vital question. The decisive factor in making a definite boundary line a necessity was the immigration of American citizens into the territory. Under such circumstances joint occupation could not last long without producing serious friction. In the Webster-Ashburton Treaty of 1842 the question of the Oregon boundary was not included, because it was feared that this might endanger the settlement of the northeastern boundary.[1] Lord Ashburton, however, had received detailed instructions from his government concerning Oregon, and Lord Aberdeen, the British foreign minister, was anxious to effect a speedy settlement of the northwestern boundary. Accordingly, in February, 1844, Pakenham, the British minister to the United States, introduced the subject to Upshur, Tyler's secretary of state. The tragic death of the latter, however, occurred before negotiations could be begun, and the duty of treating with Pakenham devolved upon Calhoun, Upshur's successor in the State Department. The Calhoun-Pakenham negotiations produced a repetition of the offers which both governments had made before on several occasions, Calhoun proposing the forty-ninth parallel from the Rockies to the Pacific, Pakenham offering the same parallel to its intersection with the Columbia and thence the course of the river to its mouth. During the negotiations Calhoun took occasion to advance the argument of "manifest destiny," in these words:

[1] First Session, 29th Congress, *Globe*, Appendix, p. 23.

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There can be no doubt now that the operation of the same causes which impelled our population westward from the shores of the Atlantic across the Alleghany to the valley of the Mississippi will impel them onward with accumulating force across the Rocky Mountains into the valley of the Columbia, and that the whole region drained by it is destined to be peopled by us.[1]

The negotiations ending in a deadlock, the British minister proposed, in January, 1845, that the question be submitted to arbitration.[2] This offer was rejected by the secretary of state, for the reason, among others, that the president still hoped that the question would be settled by direct negotiation.

President Tyler's annual message of December, 1843, had advanced the theoretical claim of the United States to the entire Oregon territory, stretching north of 42°, the northern boundary of the Mexican province of California, to 54° 40′, the southern limit of Russia's claims. It referred to the failure of preceding negotiations based upon the principle of compromise. "While nothing will be done," wrote Tyler, "to compromit the rights or honor of the United States, every proper expedient will be resorted to in order to bring the negotiations now in the progress of resumption to a speedy and happy termination."

By 1844, therefore, the Oregon question had become one of first-class importance, demanding an immediate settlement. It was on its own merits well worth the consideration of the national nominating conventions which met that year. While the whole nation was not convinced that "our title to the whole of the territory of Oregon is clear and unquestionable; that no portion of the same ought to be ceded to England, . . ." as was affirmed in the Democratic platform, the claim of the United States to the whole was by no means novel. The theory that the Oregon plank was inserted in the platform and coupled with the demand for the "reannexation" of Texas merely to make the acquisition of slave territory more palatable to the northern wing of the Democracy, by creating a makeweight, as it were, of free territory, leaves out of consideration the intrinsic im-

[1] First Session, 29th Congress, *Globe*, Appendix, p. 26. [2] *Ibid.* p. 29.

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portance of Oregon.[1] Had the annexation of Texas not been in contemplation, there would still have been an Oregon question to be settled by Great Britain and the United States at no distant day.

During the early months of his term as president, Oregon occupied the thoughts of Polk more than all other subjects.[2] Nor is this difficult to understand, if we succeed in freeing ourselves from the notion that during this period there were no very important questions in the history of the United States save those connected with slavery. It is not strange that Oregon, threatening as it did war with England, loomed even larger on Polk's political horizon than Texas, threatening war with Mexico.

The president's inaugural stated that our title to Oregon was "clear and unquestionable." That he may have been sincerely of this opinion does not seem to be regarded by most historians as possible. It was "a diatribe for political effect," "stage thunder," "bluff." Controlled, as it is assumed that he was, by the interests of the "slavocracy," Polk, it is argued, could have taken no real interest in the bleak Northwest, where, by no stretch of the imagination, could cotton be introduced. Calhoun, who regarded himself as the particular sponsor of compromise on the forty-ninth parallel, considered the statements of the inaugural "unfortunate" and a "profound blunder." Indeed, he had tried, though in vain, to influence the president against the too bold course which he took. The true policy of the United States, according to Calhoun, was "to be quiet, to do nothing to excite attention and leave time to operate."[3]

In order to understand how Polk, elected on a platform which asserted the right of the United States to all Oregon, came to make an offer of compromise to the British government, it must be remembered that at the time of his inaugura-

[1] "After the election there was no enthusiasm on the Oregon question; an agreement was made, without a murmur of Democratic dissatisfaction, upon the line of 49°". Stanwood, History of the Presidency, p. 228. This is a sample of much that has found its way into histories on this subject; it is also an example of the complete sacrifice of facts to theories.

[2] Diary, vol. i, p. 4.

[3] Letters of Calhoun, Annual Report of the American Historical Association, 1899, vol. ii, pp. 653, 656, 660.

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tion the negotiation which had been carried on by Pakenham and Calhoun was regarded as still pending.[1] An abrupt termination of this negotiation would be likely to precipitate war. The election, moreover, had been close, and the Whigs, as well as many Democrats, were opposed to the extreme American claim. Polk must have known that the nation would not support his administration in a war waged for "fifty-four forty," until every effort had been made to secure a satisfactory settlement of the question without war. At any rate, the president decided to await the result of further negotiation. A compromise on the forty-ninth parallel, he believed, would not materially injure the interests of the United States, since the best part of the Oregon territory lay south of that line. The part lying north of 49° was believed to be unfit for agriculture and of value only for the fur trade.[2] There was surely abundant precedent for an offer of compromise on this line. If the United States again offered and Great Britain again rejected the forty-ninth parallel, and war resulted, the former would be in the right and could then insist on its claims up to 54° 40′.[3] The renewal of negotiations in July, 1845, is sometimes regarded as evidence that Polk never had any intention of carrying out the Oregon plank in his platform, and that in reality he was always in favor of compromise on the forty-ninth parallel. We have, however, official testimony to the contrary. In a letter written to the United States minister at London on the day on which the president's offer was made, Buchanan, then secretary of state, said that, were the question a new one, the president would not have presented such a proposition[4]; and on another occasion he wrote that nothing but deference to the

[1] According to Benton, Polk's inaugural had the effect of arousing public sentiment in England, and the administration was in a dilemma. To insist on 54° 40′ meant war, to recede from it was to abandon the platform. Benton, who represents himself as the real hero of the Oregon negotiations which resulted in the treaty of 1846, tells us that early in April, 1845, Buchanan, Polk's secretary of state, consulted him, and that he said he was in favor of compromise on the forty-ninth parallel and would support such a proposition if made by the administration. See Thirty Years' View, vol. ii, p. 661.

[2] Works of Buchanan (ed. by J. B. Moore), vol. vi, p. 191.

[3] *Ibid.* p. 191.

[4] *Ibid.* p. 193.

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repeated actions of his predecessors and the desire to preserve friendly relations with Great Britain had induced the president "to depart from his well-known opinions." Since Polk's offer of July 12, 1845, though proposing 49° as a compromise, withheld a concession upon which the British government laid great stress and which earlier administrations had been willing to make, namely, the free navigation of the Columbia, and since the settlement offered was therefore decidedly less favorable to Great Britain than others which that country had rejected, it seems questionable whether the president entertained the expectation that it would be accepted. Buchanan wrote:

> Should it be rejected, the President will be relieved from the embarrassment in which he has been involved by the acts, offers and declarations of his predecessors. Afterwards, if the difficulty can only be resolved by the sword, we may then appeal with confidence to the world for the equity and justice of our cause.[1]

This letter of Buchanan was official; the sentiments expressed were those of the president. The offer of July 12 was rejected by Pakenham on the 29th, and the hope was expressed by the British minister that some further proposal would be made by the United States, "more consistent with fairness and equity and with the reasonable expectations of the British government."[2]

If the traditional view, that Polk was really in favor of the forty-ninth parallel, be correct, he must have received Pakenham's reply to his offer with regret. Such, however, was not the case. The president was not sorry. Since his offer had been rejected, he said, he would no longer be willing to compromise on the same terms.

> The President further remarked . . . that though he had given his assent to the proposition to compromise at 49°, he must say he did not regret that it had been rejected by the British Minister. We had shown by it our anxious desire to do full justice to Great Britain and to preserve peace, but it having been rejected he felt no longer bound by it, and

[1] Works of Buchanan, vol. vi, pp. 193, 194.

[2] For the offer of July 12, see Works of Buchanan, vol. vi, pp. 194 *et seq.* For Pakenham's rejection, see *ibid.* pp. 212 *et seq.*

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would not be now willing to compromise on that boundary. Mr. Buchanan then intimated that if the President's views were carried out, we would have war. To which the President replied, if we do have war, it will not be our fault. Mr. Buchanan . . . expressed the opinion that the people of the United States would not be willing to sustain a war for the country north of 49°. . . . The President differed with Mr. Buchanan as to the popular sentiment, and he thought we had the strongest evidence that was to be anywhere seen that the people would be prompt and ready to sustain the Government in the course which he proposed to pursue.[1]

In a cabinet meeting of August 26 the president explained his future policy in the Oregon question. Buchanan's note in answer to Pakenham's rejection of the American offer should assert our right to all Oregon from 42° to 54° 40′. It should distinctly state that the offer had been made in deference to acts of predecessors and to preserve peace; that it had been rejected by the British minister in language "scarcely courteous or respectful"; that no counter proposition had been submitted; and that the offer was now withdrawn by the United States, to be no longer considered as pending for the consideration of the British government. Polk desired the matter to rest unless the British minister chose to renew the negotiation.[2] Buchanan was for holding out the olive branch by inserting in his reply to Pakenham a paragraph to the effect that the United States would consider any further proposition which the British minister might submit. Polk objected to this on the ground that Pakenham would infer that we were prepared to accept terms less favorable to the United States than those which had been offered, since he could not be expected to propose terms more favorable to the United States than those he had just rejected.[3] The British minister, Polk insisted, must take the initiative, if negotiations were to be renewed; and this proposition the president maintained throughout the discussion of the question. Buchanan favored postponing the reply to Pakenham until it should be known whether there was to be war with Mexico or not[4]; but Polk declared that there was no necessary connection

[1] Diary, vol. i, p. 4. [2] *Ibid.* p. 2. [3] *Ibid.* p. 3. [4] *Ibid.* p. 4.

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between the two questions, and he objected to a postponement of the reply because it would suggest indecision on the part of the United States. On August 27 the secretary of state read in the cabinet the answer he had prepared.[1] The president observed that it was an "admirable paper," and that the argument for the claims of the United States was unanswerable. "In this opinion," wrote Polk, "all the members of the Cabinet concurred. The Postmaster General remarked that, if he had heard that argument before the compromise of 49° was proposed, he would not have agreed to it."[2] The note of Buchanan, withdrawing the American offer, was delivered to Pakenham on August 30.

The action of the president in formally withdrawing his offer, after it had been rejected by the British minister, while quite consistent with the views expressed in his inaugural, is explained by Benton as a concession to the radical democracy of the Northwest, which insisted on 54° 40′ and, having learned of Polk's offer of compromise, raised such a storm of protest that the administration "quailed—recoiled—and withdrew its offer of 49°."[3] According to Benton, however, the president remained secretly in favor of a compromise on the forty-ninth parallel.

The withdrawal of the American offer evidently produced an impression on the British government. A dispatch from McLane, United States minister at London, dated October 3, described an interview between himself and Lord Aberdeen, in which his lordship expressed regret that Pakenham had rejected the proposition made by the United States and desired to know if the president would negotiate further. Polk took this as evidence that the British government had "lowered their tone." He remarked that any further proposition from the other side would be received and considered, but repeated that he would not now accept the terms which he had previously offered. He saw no reason to believe that any proposition would be made which could be accepted; and this opinion he expressed on

[1] Works of Buchanan, vol. vi, pp. 231 *et seq.*

[2] Diary, vol. i, p. 7.

[3] Benton, Thirty Years' View, vol. ii, p. 662.

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several subsequent occasions. If a proposition were received he would either reject it or submit it to the Senate for advice.[1] Pakenham professed regret that the American offer had been withdrawn. He was informed by Buchanan that the United States would respectfully consider any proposition that Great Britain might make; but beyond that the president refused to go. Buchanan personally favored a more conciliatory policy and felt that no effort should be spared to secure a compromise. Indeed a serious difference of opinion developed on this subject between the secretary of state and the president.[2]

Polk was naturally anxious to learn the sentiment of the Congress which was to meet in December and to ascertain the views of its leaders. On October 24, in the course of a conversation with Senator Benton, Polk said that since his offer had been rejected he was disposed to assert our extreme claims. He believed that Great Britain desired the renewal of the offer which had been withdrawn, but he saw no probability that the Oregon boundary could be settled by negotiation. The president and Benton agreed that the year's notice necessary to terminate the convention of 1827 ought to be given.[3] During the interview Benton remarked that Great Britain had as good a title to the Frazer River as the United States had to the Columbia. Polk, however, thought that the Monroe Doctrine ought to be asserted with respect to both Oregon and California. Benton agreed that no foreign power should be permitted to acquire California; and the president concluded that he did not think that the Monroe Doctrine applied to territory north of 49°, drained by the Frazer River, where the British had established trading posts and forts.

On October 25, Polk read to his cabinet that part of his coming annual message which dealt with Oregon. A few days later Buchanan drew up a paper "modifying and softening the tone" of the president's draft. To Buchanan's suggestions

[1] Benton says that the plan of submission to the Senate for their previous advice, which was followed in the Oregon Treaty of 1846, was suggested to the President by him, and implies that it was just before the treaty was made. Thirty Years' View, vol. ii, p. 674.

[2] Diary, vol. i, pp. 81, 97, 98.

[3] Diary, vol. i, pp. 69, 70.

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Polk did not yield. He was, in fact, becoming convinced that the demand for all Oregon was growing in popular favor. In reply to Buchanan's statement that the nation would not justify a war for the territory north of 49° and that the president was in danger of being attacked for his belligerency, Polk said that his greatest danger was that he had yielded to his predecessor's example in offering to compromise. Had that offer been accepted by Great Britain, his administration, he thought, would have encountered great opposition.[1]

The message, then, so far as it related to Oregon, evidently expressed the views of the president rather than those of the secretary of state.[2] Polk announced that his offer of compromise was withdrawn and the American title to all Oregon asserted. He recommended that notice be given to abrogate the convention of 1827 and to terminate the joint occupation. The Monroe Doctrine was reaffirmed in strong terms. The United States would not permit European interference on this continent, nor could the principle of the balance of power be extended to North America in order to prevent the United States from adding to its territory. It is noteworthy that the message devoted almost as much space to Oregon as to Texas and Mexico. That its recommendations, if carried out, would probably lead to war was the opinion of the press and the nation.[3] It was, however, well received—"better received," wrote Buchanan, "than any similar communication to Congress in my day."[4] Though the president could not have foreseen the exact results which his message would produce, there can be little doubt that the decided and bold tone which he assumed was a factor of great importance in causing the British government to renew the negotiations which resulted in the settlement of the Oregon question.[5]

The difference of opinion between Buchanan and Polk, which has been referred to, was illustrated in the preparation of a dis-

[1] Diary, vol. i, pp. 106, 107.

[2] "The fact is," wrote Polk, "that the tariff part of the message and every other part of it is my own." *Ibid.* vol. i, p. 124.

[3] Works of Calhoun (ed. by Crallé), vol. iv, pp. 260, 261.

[4] Works of Buchanan, vol. vi, p. 342.

[5] Diary, vol. ii, p. 168.

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patch written to McLane on December 13, 1845. Buchanan's draft contained the statement that if Great Britain should offer the forty-ninth parallel and abandon its claim to the free navigation of the Columbia, the United States at the same time yielding the southern cape of Vancouver's Island, the president would feel inclined to submit such a proposition to the Senate for its advice. The president caused this to be altered so as to read, in substance, that, should the British government make a new proposition, the president would judge of its character, and if, in his opinion, it was such as to justify it, he would feel inclined to submit it to the Senate for "previous advice" before acting on it, since the decision on such a proposition might involve the issue of war or peace.[1] Buchanan thought that the president's alteration gave McLane no real information, and that, unless Polk was willing to let the dispatch stand as he had written it, the United States had better prepare for war.

On January 29, 1846, the secretary of state wrote to McLane that the extreme claim to Oregon was growing more and more popular. He referred to resolutions of state conventions and legislatures in favor of 54° 40′; and he suggested that McLane cautiously inform the British government that, while the president would never abandon his position as regarded the American claim to all Oregon, and would not now authorize the conclusion of a treaty on the basis of the offer he had previously made, the Senate was then in session. The question of peace or war might be involved in the issue. Since the Senate was a part of the war-making as well as of the treaty-making power, the president would feel it his duty to submit to that body for its previous advice a proposition similar to that which he had offered and withdrawn.[2] In a private letter of February 26, he told McLane that a proposition to compromise on the forty-ninth parallel would probably receive a two-thirds vote of the Senate. Public opinion, however, was more radical than Congress. "Discreet friends of peace clearly perceive that the question must be settled peacefully within the year or war may be the consequence."[3]

[1] Diary, vol. i, pp. 122, 123. For the letter, see Works of Buchanan, vol. vi, p. 341.

[2] Works of Buchanan, vol. vi, pp. 367, 368.

[3] *Ibid.* pp. 385, 386.

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To arbitrate was the proposal with which the British minister sought to reopen the discussion of the Oregon question. Arbitration, it will be remembered, had been offered before by Pakenham and refused by Calhoun. Learning that the British minister would soon propose it again, the cabinet now agreed unanimously that it could not be accepted. In the first place, they thought that a compromise of this kind was not a fit subject for arbitration; in the second place, an impartial umpire could not be found.[1] On December 27, Pakenham formally proposed the submission of the question of an "equitable division" of Oregon to arbitration. He spoke of the "effervescence" of popular feeling, which might greatly interfere with the efforts of Great Britain and the United States to preserve peace.[2] Pakenham suggested as possible arbitrators Switzerland, Hamburg or Bremen. Buchanan, in jest, proposed the pope.[3] He explained that arbitration implied the right of Great Britain to a part of the territory, while the president was convinced of the validity of the American title up to 54° 40′. On January 3, the offer was formally declined.[4] On January 16, Pakenham, returning to the subject, asked if the United States would submit to arbitration, first, the question of the title of either party to the whole territory, and then, if neither were found to have a valid claim to the whole, the division of the territory between the two according to the justice of the claims of each.[5] On February 4, this question was answered in the negative.[6]

The Twenty-ninth Congress convened amidst loud talk of war. This was the epoch of "Fifty-four Forty or Fight." Great Britain and the United States stood, indeed, on the brink of hostilities. The former, moreover, was known to be making extensive warlike preparations. Pakenham, it is true, assured Buchanan that they had no connection with Oregon, but the administration was manifestly uneasy, and McLane was instructed to bring the subject to the attention of Lord Aberdeen.

[1] Diary, vol. i, p. 134.
[2] Works of Buchanan, vol. vi, p. 349.
[3] *Ibid.* pp. 351, 352.
[4] *Ibid.* p. 355.
[5] *Ibid.* p. 358.
[6] *Ibid.* pp. 370 *et seq.*

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On December 23, the question of war was seriously discussed in the cabinet. The president favored vigorous preparations to put the country in a state of defence. Buchanan, too, thought we should prepare for war. The secretaries of war and of the navy were directed to consult with the chairmen of the military and naval committees of the two houses, communicate to them the views of the cabinet and aid in drafting suitable bills.[1]

In a cabinet meeting held February 28, 1846, Buchanan suggested that the president send a message to Congress recommending provision for the public defence. Most of the cabinet favored this proposal, but Polk feared that such a message might create a panic. He wished that Congress had put the country in a better state of defence quietly and without arousing unnecessary alarm, and he thought that the state of our relations with Great Britain and Mexico required that this should be done. It was finally agreed to postpone the further consideration of a special message until the arrival of the next mail from England.[2]

In answer to an inquiry of the Senate, whether in his judgment the state of our foreign relations required an increase of naval or military force, the president sent a special message to that body on March 24.[3] In this document he referred to the warlike preparations making both in England and in the British possessions in North America, which, he said, were proceeding with a view of the possibility of war with the United States. He accordingly advocated the increase of the land and naval forces. He still adhered, he said, to the recommendations of his annual message.

The president was especially desirous that Congress should pass the measures recommended in his message, particularly the notice necessary to terminate joint occupation. Until that was done, he believed the British government would yield none of its claims. In Polk's words: "The only way to treat John

[1] Diary, vol. i, pp. 133, 134. Von Holst accepts the Whig view that Polk had in reality no idea of war, and would not hesitate to back down, if necessary, to avoid it. Constitutional and Political History of the United States, vol. iii, p. 192.

[2] Diary, vol. i, pp. 257, 258, 270.

[3] Richardson, Messages and Papers of the Presidents, vol. iv, pp. 426 *et seq.*

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Bull was to look him straight in the eye."[1] The debate on the question of giving the notice showed, however, that if the president should refuse a British offer of compromise on the forty-ninth parallel he would split his party. The attitude of Calhoun was particularly important, on account of his influence over the southern wing of the Democracy. Calhoun was opposed to giving the notice recommended by the president, which he regarded as a warlike measure, because he was strongly in favor of peace and believed that compromise was still possible.[2] In the course of an interview with the president on January 10, he remarked that those who voted for the notice would do so from different motives. Some, the radicals, would regard it as a measure which would prevent any compromise; others would support it in the belief that, when the matter was brought to a crisis, a compromise would be the result. Calhoun himself strongly favored the forty-ninth parallel, and considered that Great Britain had as good a claim to the Frazer as the United States had to the Columbia. Polk, indeed, concluded that Calhoun would soon be in opposition to his administration.[3] Benton, too, was known to favor compromise, ridiculing "fifty-four forty." The southern Democracy, it was clear, would break with the administration if an offer to compromise on 49° were refused. But the northwestern Democrats were clamorous for all Oregon. Senator Allen of Ohio, a leader of the "Fifty-four Forties" told Polk that the acceptance of a proposition such as Calhoun and Benton favored would destroy the popularity of the administration.[4] Colonel Tod of Ohio, Democratic candidate for governor, said that if a compromise were accepted the Democratic party would be beaten in Ohio.[5] A large majority of the people of Ohio, he thought, favored war. Senator Turney of Tennessee impressed upon Polk the obvious fact that he was between two fires and could not avoid displeasing a part of the Democracy whatever course he followed.[6]

[1] Diary, vol. i, p. 155.

[2] *Ibid.*, vol. i, pp. 131, 154. Works of Calhoun (ed. by Crallé), vol. iv, p. 261.

[3] Diary, vol. i, p. 132. [4] *Ibid.* p. 248. [5] *Ibid.* p. 242. [6] *Ibid.* p. 141.

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A plan was devised by southern senators, notably Calhoun and McDuffie of South Carolina and Colquitt of Georgia, to bring forward in executive session of the Senate a resolution advising the president to reopen negotiations on the subject of Oregon and to settle the matter by a compromise. Senator Haywood of North Carolina, himself in favor of compromise, in informing the president of this scheme said that Calhoun and his followers would be willing to settle with Great Britain on any terms.[1] Calhoun, it is known, believed that if war with England were averted, as he hoped it would be, there would probably be no war with Mexico.[2] The president was, of course, opposed to the plan of the southern senators, which, if carried out, would have taken the real conduct of negotiations out of his hands. In a conversation with Calhoun and Colquitt on February 25, however, he remarked that if the British government offered 49° he should probably feel it his duty to submit this offer to the Senate for its previous advice. Calhoun thought that the president could again propose 49° "without national dishonor." Polk, however, remained firm in his decision that further proposals must come from Great Britain.

The rumor got abroad that the president really favored compromise. In a speech delivered in the Senate, early in March, Senator Haywood made the statement that Polk favored compromise on the forty-ninth parallel; and he undertook to show that, since American citizens had never settled north of that line, the word "reoccupation," used in the platform of 1844, could not apply to territory north of 49°. According to Benton, Haywood expressed the sentiments of the president, "personally confided to him, and to prepare the way for his action in conformity to them."[3] That Polk was foolish enough to authorize the statements of Haywood seems unlikely; and we have his own testimony that such was not the case. Senator Hannegan of Indiana, one of the leaders of the "Fifty-four Forties," replied to Haywood that if the opinions

[1] Diary, vol. i, p. 246.

[2] This was before Taylor's march to the Rio Grande.

[3] Thirty Years' View, vol. ii, p. 663. Von Holst follows Benton; see Constitutional and Political History of the United States, vol. iii, p. 219.

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he voiced were really those of Polk, the president was consigned to "a damnation so deep that the hand of resurrection will never be able to drag him forth." Hannegan himself called on the president and asked if he stood for 54° 40′ or for compromise. Polk replied: "I am charged with the foreign relations of the country, and it was unheard of that the president should declare in advance to anyone out of his cabinet his intentions in reference to them." [1] Senator Allen tried to commit Polk to 54° 40′, and asked for permission to tell the Senate that the president had not changed his views on the Oregon question. Polk declined to allow anyone to speak for him. "I told him I stood on my published opinions and acts." [2]

On January 24, the president suggested to the cabinet a new plan for the settlement of the Oregon question, by which it might be possible for the United States to secure the whole territory. There was in his judgment no likelihood that a division could be agreed upon. But a treaty of commerce between the United States and Great Britain might be made the basis for an adjustment of the Oregon dispute. Each country might agree to relax its restrictive system with respect to the other. The reduction of our tariff would certainly be regarded with favor by Great Britain; and in order to secure it the British government might be willing to abandon all claim to Oregon, on receiving a sum of money with which to indemnify the Hudson's Bay Company for the improvements it had made there. The suggestion was made merely as a possibility.[3]

Resolutions for giving the notice in a qualified form were finally passed in the House by a large majority. In the Senate the "Fifty-four Forties" constituted a small minority. During the course of the long debates, public sentiment was growing more favorable to compromise, and a large majority of the Senate favored a settlement of the question on that basis. On March 16 Calhoun announced that the aspect of things was so different from what it had been when the annual message was published that he should vote for the notice in a modified form,

[1] Diary, vol. i, pp. 270–274. [2] *Ibid.* p. 279. [3] *Ibid.* p. 191.

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because he regarded it as preliminary to a compromise.[1] By the votes of the Whig senators and of those Democrats who favored compromise a resolution to give the notice was passed. A preamble, moreover, stated that its object was to promote an amicable settlement between the two nations. Congress finally authorized the president to give the notice at his discretion. Though Polk would have preferred an unqualified notice, he signed the resolution on April 28, and the formal notice was soon given. Benton suggested that the president should ask the Senate whether, in giving the notice, he should not renew the offer of 49°. Senator McDuffie and Vice-President Dallas desired a renewal of the president's former offer when the notice was given. But the president insisted that future propositions must come from Great Britain.[2]

As Polk viewed it, the excitement in the Senate over the question of giving notice was caused by the political ambitions of the leaders. Calhoun, he thought, hoped by his early opposition to the notice to become the leader of the peace party and "advance his views on the presidency." Allen would probably consider war advantageous; Cass, too, was using "fifty-four forty" for his own purposes. The president wrote, in his diary:

> The truth is that in all this Oregon discussion in the Senate, too many Democratic Senators have been more concerned about the Presidential election in '48 than they have been about settling Oregon either at 49° or 54° 40′. "Forty-eight" has been with them the great question, and hence the divisions of the Democratic Party.[3]

On June 3, 1846, a dispatch from McLane was received, written after it was known in England that Congress had passed the notice. This dispatch contained the substance of a proposal which McLane had learned from Aberdeen would be offered by the British minister at Washington. From the information sent by McLane, Polk was in doubt whether, when the proposal was formally made, he ought to submit it to the Senate or not. If he rejected it and made no counter-

[1] For this speech, see Works of Calhoun (ed. by Crallé), vol. iv, pp. 258 *et seq.*

[2] Diary, vol. i, pp. 325, 348, 372.

[3] *Ibid.* pp. 265, 280, 344, 345.

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proposition, there would probably be war. "If I submit it to the Senate and they should advise its acceptance I should be bound by their advice, and yet I should do so reluctantly.[1] On June 6 Buchanan read to the cabinet the official offer which he had just received from Pakenham, in the form of a convention. It provided, in substance, that Oregon be divided by the forty-ninth parallel from the Rocky Mountains to the Straits of Fuca. The Hudson's Bay Company and all British subjects in actual occupancy of lands south of 49° were to be secured in their titles but subject to the jurisdiction of the United States. The navigation of the Columbia was to be free to the Hudson's Bay Company and to British subjects trading with that company but not to British subjects in general. Most of the cabinet advised the submission of the offer to the Senate for its previous advice. Buchanan, however, now displayed a strange change of front. He had before been strongly in favor of the forty-ninth parallel. He now observed that the "Fifty-four Forties" were true friends of the administration, and he wished no backing-down. He favored the submission of the offer to the Senate, provided the president accompanied it with a message reiterating the opinions he had previously expressed; he declined, however, to have any hand in the preparation of such a message. Polk concluded that Buchanan intended to avoid all responsibility for the submission of the proposal to the Senate, and thus stand well in the favor of the "Fifty-four Forties," with a view to advancing his presidential ambitions.[2]

On June 10, the president submitted the British offer to the Senate for its previous advice. For this unusual procedure he found precedents in our early national history and said that it might properly be revived. The Senate was a branch of the treaty-making power and by consulting it in advance the president secured harmony of action between that body and himself. The Senate was also a branch of the war-making power, and the president might very properly take its advice in advance upon a question which might involve the issue of war or peace. He stated that his own views as expressed in his annual mes-

[1] Diary, vol. i, pp. 444, 445.

[2] *Ibid.* p. 456.

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sage remained unchanged. If the Senate by a two-thirds vote advised the acceptance of the British offer, he would follow its advice. Otherwise he would reject it.[1]

The Senate advised acceptance by a vote of 37 to 12, and later ratified the treaty, 41 to 14. The Whig senators and those Democrats who favored compromise voted in the affirmative; the "Fifty-four Forties" in the negative.

The treaty was clearly not a party measure. It was in accordance neither with the Democratic platform of 1844 nor with the president's inaugural nor with his annual message. The president had declined all responsibility for it. It was the Senate's treaty. Because Polk refused to assume the responsibility for war with Great Britain, for the disruption of his party and for the failure of his administration—and these apparently would have been the results of rejecting the British offer—we need not infer that he had been playing a double game. In considering the testimony of Benton, the well-known views of that statesman on the Oregon question and his obvious desire to take for himself the center of the stage and pose as the confidential adviser of the president must be taken into account. That Polk was in great haste to settle the Oregon question in order to have a free hand in his dealings with Mexico is a supposition wholly inconsistent with the evidence. If there had existed in his mind any such connection between Oregon and the dispute with Mexico, it is inconceivable that he should have ordered the movement of American troops to the Rio Grande, thus precipitating war with Mexico, before the British proposal had been made.[2] Had this proposal been delayed only a few days, news of the war between the United States and Mexico would have reached England, and it would probably not have been offered. The credit for averting hostilities between the United States and Great Britain belongs to the Government of Sir Robert Peel, which wisely decided to make the best terms it could without risking a war to increase the British possessions on the Pacific.

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[1] Richardson, vol. iv, pp. 449, 450.

[2] Letters of Calhoun, Annual Report, American Historical Association, 1899, vol. ii, p. 698.

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THE UNITED STATES POSTAL SAVINGS BANK[1]

ON June 25, 1910, by the signature of President Taft and largely as the result of his influence, the Postal Savings Bank Bill became law. Thus after nearly forty years of discussion, occasionally rising to heights of agitation, as during the administrations of Postmasters-General Creswell, Wanamaker and Meyer; after eight postmasters-general had recommended the establishment of postal savings banks[2] and ten times as many bills[3] had been introduced into Congress for this purpose, the United States finds itself in line with most of the other great nations of the world in this matter.[4] This is not, however, the first experience of the United States with postal savings banks. To be exact, this will be the third postal savings bank to exist under the American flag; the first being the Hawaiian postal savings bank, which was established in 1886 and was closed shortly after the American annexation in 1898, and the second being the Philippine postal savings bank, which has been in successful operation since 1906.

A consideration of the forty years of discussion concerning the establishment of a postal savings-bank system in the United States does not fall within the scope of this paper, which is primarily concerned with the legislation of 1910. It will be

[1] In the preparation of this article the writer has been greatly assisted by an unpublished report on the subject by Mr. Raleigh S. Rife, a graduate student in Cornell University.

[2] The recommendations of postmasters-general from 1871 to the present time, together with other valuable material illustrating the movement for postal savings banks in the United States, are summarized in a speech in the House of Representatives by George Edmond Foss of Massachusetts. *Congressional Record*, June 20, 1910, pp. 8709 *et seq.*

[3] For a list of bills, see Report no. 1445, House of Representatives, 61st Congress, Second Session (June 7, 1910), pp. 63–66.

[4] For descriptions and statistics of the different postal savings banks of the world, see Notes on the Postal Savings Banks Systems of the Leading Countries, National Monetary Commission Report, Senate Document no. 658, 61st Congress, Third Session.

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necessary to consider only the events immediately leading to that legislation.

The panic of 1907 was characterized by a widespread lack of confidence in banking institutions.

> Everywhere the banks suddenly found themselves confronted with demands for money by frightened depositors; everywhere, also, banks manifested a lack of confidence in each other. . . . Explanation is simple, however, if the course of our previous crises is recalled. Seven times during the last century the banks suspended payment in some measure at least, and there has been a currency premium, the last occasion having been so recent as 1893. There is a well grounded belief among the people that it will be difficult to secure cash during periods of economic disturbance.[1]

Add to the hardships of this panic the numerous recent scandals in "high finance," particularly those connected with New York banks, and it is not surprising that among certain classes in the country a lack of confidence in banking institutions should have been manifested. This distrust of banks led to the propaganda for the guaranty of bank deposits and to a renewal of the agitation for postal savings banks. Postmaster-General Cortelyou, in his annual report for 1906,[2] had merely mentioned postal savings banks in connection with other projects, "the merits and defects . . . of which should have in the not distant future the fullest consideration." In the three succeeding annual reports, the postmaster-general strongly urged the establishment of postal savings banks. Before the panic of 1907 was over, and while currency was still at a premium in New York, the newly created state of Oklahoma passed a law, December 17, 1907, providing for the guarantee of bank deposits; and in the course of the next two years four other states, Kansas, Nebraska, South Dakota and Texas, passed deposit guaranty acts.[3] President Roosevelt in his messages of

[1] O. M. W. Sprague, History of Crises under the National Banking System, National Monetary Commission Report, Senate Document no. 538, 61st Congress, Second Session, pp. 259, 260.

[2] Report of the Postmaster General, 1906, p. 81.

[3] *Cf.* Thornton Cooke, "Insurance of Bank Deposits in the West," in *Quarterly Journal of Economics*, vol. xxiv, pp. 85–108, and vol. xxv, pp. 327–390.

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December, 1907, and March, 1908, favored a postal savings-bank system.[1] In June, 1908, the Republican National Convention included in its platform a plank favoring "the establishment of a postal savings-bank system for the convenience of the people and the encouragement of thrift." The Democratic platform, adopted a few weeks later at Denver, after expressing a desire for government guaranty of bank deposits, said:

> We favor a postal savings bank if the guaranteed bank cannot be secured, and that it be constituted so as to keep the deposited money in the communities where it is established. But we condemn the policy of the Republican party in proposing postal savings banks under a plan of conduct by which they will aggregate the deposits of rural communities and redeposit the same while under government charge in the banks of Wall Street, thus depleting the circulating medium of the producing regions and unjustly favoring the speculative markets.

The Prohibition party platform advocated "the establishment of postal savings banks and the guarantee of deposits in banks"; the Populist platform demanded "that postal savings banks be instituted for the savings of the people"; and the Independence League platform declared "government postal savings banks should be established where the people's deposits will be secure, the money to be loaned to the people in the locality of the several banks at a rate of interest to be fixed by the government." With such unanimity of opinion in all the political parties, the question of postal savings banks did not figure prominently in the campaign. There was, however, considerable discussion of the proposal for guaranteeing bank deposits.

After the election, some of the leaders of the Republican party, particularly President Taft, who had for years been a believer in postal savings banks, began to urge upon Congress compliance with the Republican platform pledge to establish a postal savings-bank system. The subject received the attention of the Sixty-first Congress, in its second session. Disregarding the other postal savings-bank bills introduced at this session,

[1] *Congressional Record*, December 3, 1907, p. 77, and March 25, 1908.

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we may confine our attention to the legislative history of the so-called Carter bill, which eventually became law. This bill was introduced January 26, 1910, by Senator Thomas H. Carter of Montana and was referred to the Committee on Post Offices and Post Roads, of which Senator Carter was a member. It was reported back by the committee on the following day. The bill with various amendments passed the Senate on March 5 by a vote of 50 to 22, only one Democrat voting for it.[1] It was referred to the House on March 7, where it was extensively amended and was finally passed, June 9, by a vote of 196 to 101, only 22 Democrats voting "yes."[2] The Senate concurred in the House amendments on June 22, by a vote of 44 to 25, only one Democrat voting with the majority[3]; and the bill was signed by the president three days later.[4]

Before considering the specific provisions of the Postal Savings Bank Act as finally passed, it may be well to notice the chief arguments advanced for and against the general proposition to establish a postal savings-bank system of any kind. In spite of the numerous differences in the postal savings-bank systems of the forty-odd countries possessing them, there are certain fundamental features common to all. Whatever else a postal savings bank may be, it is without exception an institution working principally through the post offices, and its primary object is the encouragement of thrift among the poorer classes by providing safe and convenient places for the deposit of savings at a comparatively low rate of interest. In the discussion of the postal savings-bank proposition in this country, no one questioned the desirability of encouraging habits of economy and thrift on the part of the public, nor was there any question that adequate savings-bank facilities should be provided for this purpose; the debate hinged very largely upon the question whether adequate facilities of this character were not already provided by private initiative.

[1] *Congressional Record*, March 5, 1910, p. 2831.

[2] *Ibid.* June 9, 1910, p. 7957. [3] *Ibid.* June 22, 1910, p. 9073.

[4] The legislative history of the bill (Senate Bill 5876) was summarized in the House in a speech by Representative David J. Foster, June 9, 1910. *Congressional Record*, June 20, 1910, p. 8753.

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The advocates of a postal savings bank claimed that adequate savings facilities were not and could not be provided by private enterprise, because of the expense of conducting savings banks in small communities, and also in larger communities where the people were not yet educated to the saving habit; and they pointed particularly to the lack of savings facilities in the southern and western states.

Postmaster-General George von L. Meyer, in his report for 1908 (pages 12, 13), cited figures from the comptroller of the currency, showing that the deposits in savings banks in the United States at that time amounted to $3,660,553,945; that 72 per cent of this amount was deposited in the New England states and New York; and that 98.4 per cent was deposited in fourteen states, leaving only 1.6 per cent to the remaining states and all the territories. These figures were severely criticized by the banking fraternity, on the ground that they referred only to mutual and stock savings banks, whereas the savings deposits of the country included also amounts deposited in the savings departments of other banks. A report was prepared for the committee on postal savings banks of the savings-bank section of the American Bankers Association, under date of May, 1909, criticizing the official statistics and offering supplementary figures, showing that the savings of the American people amounted to about nine and a half billion dollars, exclusive of deposits in school savings banks, "private investments of small savings in bonds," and "the savings invested in homes and homesteads." The bankers' figures included the accumulations of building and loan associations ($745,993,000) and the assets of life-insurance companies ($3,159,581,000). Obviously the term savings is a very elastic one, and, when it is carried beyond the field of small and relatively permanent deposits in banking institutions and into the field of investments, it is given an extension difficult to limit and of little use in a study of savings-bank facilities.

In December, 1909, the National Monetary Commission published its special report, giving the banking statistics of the country as of 1909.[1] It estimated the number of banks and

[1] Senate Document no. 225, 61st Congress, Second Session.

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banking firms in the United States at 25,000. "Of this number reports were obtained from all but about 2500, the omissions being chiefly of concerns whose business is confined to brokerage and exchange"[1] and which would be negligible as savings depositories. Exactly what proportion of the reporting banks carried savings accounts is not known, as some of them did not answer the inquiries referring to this subject. The figures given, however, show that of the 6585 national banks in the United States (excluding island possessions and Alaska) 3511 reported savings accounts, with a total of 1,964,223 savings depositors and savings deposits of $756,827,891.[2] Of the 8239 state banks reporting, 4675 reported savings accounts, with a total of 2,195,727 savings depositors and saving deposits amounting to $592,949,131.[3] 627 mutual savings banks reported 7,204,579 depositors with total deposits of $3,138,763,705[4]; 913 stock savings banks reported 1,412,634 savings depositors with total deposits of $495,178,368. Of 993 private banks, 560 reported savings accounts, with 130,865 savings depositors and total savings deposits of $32,444,593, of which approximately half were certificates of deposit or time deposits.[5] Of the 862 loan and trust companies reporting, 696 carried savings accounts with 1,965,333 savings depositors and total savings deposits of $657,697,417.[6] Grouping all of these classes of banks together, we have 18,219 banks making reply to the inquiries concerning savings accounts. Of this number 10,982 carried savings accounts, and they had 14,873,361 savings depositors and savings deposits of $5,673,861,104.

The first of the following tables shows the degree to which the various parts of the country were provided with saving facilities in 1909, and the degree to which they were provided with independent post-offices. Comparison of these figures shows that the country is not nearly so well provided with banks receiving savings accounts as with post-offices. In the United States there are 270 square miles of territory to each bank carrying savings accounts and 50 square miles to each post-office; there is a

[1] *Ibid.*, p. 3. [2] *Ibid.* pp. 36–39. [3] *Ibid.* pp. 40–43.
[4] *Ibid.* p. 44. [5] *Ibid.* p. 48. [6] *Ibid.* p. 52.

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TABLE I. COMPARISON OF SAVINGS-BANK FACILITIES AND OF

SECTION AND STATE	SAVINGS BANKS [2]			OTHER BANKS CARRYING SAVINGS ACCOUNTS [2]		
	NUMBER	NUMBER OF SAVINGS DEPOSITORS	AMOUNT OF SAVINGS DEPOSITS (000)	NUMBER	NUMBER OF SAVINGS DEPOSITORS	AMOUNT OF SAVINGS DEPOSITS (000)
New England States:						
Maine	51	226,166	$87,410	80	106,521	$31,369
New Hampshire	51	174,341	77,693	21	23,416	6,366
Vermont	21	104,620	39,471	53	73,965	26,423
Massachusetts	187	2,002,010	728,497	57	47,127	18,653
Rhode Island	18	130,231	69,298	13	62,184	47,272
Connecticut	85	540,672	255,811	13	13,229	3,907
Total	413	3,178,040	$1,258,180	237	326,442	$133,990
Eastern States:						
New York	137	2,760,343	1,405,240	414	478,547	189,800
New Jersey	27	297,200	98,131	218	344,668	110,417
Pennsylvania	11	452,487	166,095	956	817,536	354,393
Delaware	2	25,380	9,135	27	10,288	2,493
Maryland	44	243,569	88,425	118	102,748	37,252
District of Columbia.	12	54,069	11,296	5	33,642	7,597
Total	233	3,843,048	$1,778,322	1,738	1,777,429	$701,952
Southern States:						
Virginia	20	32,212	9,257	115	94,655	33,861
West Virginia	10	28,681	5,652	145	62,947	17,802
North Carolina	21	37,967	6,231	214	65,777	11,970
South Carolina	22	27,129	8,502	137	39,424	10,198
Georgia	16	31,953	7,117	234	67,283	12,699
Florida	4	6,295	955	93	32,085	7,618
Alabama	7	12,271	1,861	88	38,454	5,950
Louisiana	8	46,474	12,540	105	34,259	8,816
Texas	. . .	. . .	. . .	127	34,484	9,158
Arkansas	4	2,406	534	81	11,781	2,399
Kentucky	9	9,368	1,080	174	50,226	20,293
Tennessee	21	37,992	11,111	127	47,651	10,216
Mississippi	12	7,640	2,003	113	23,911	5,429
Total	154	280,388	$66,843	1,753	602,937	$156,409
Middle Western States:						
Ohio	41	295,222	97,854	482	566,294	176,428
Indiana	5	32,039	10,975	328	239,182	57,910
Illinois	. . .	. . .	. . .	663	821,203	258,315
Michigan	14	74,178	30,490	429	532,811	143,947
Wisconsin	3	6,249	1,145	393	318,716	77,883
Minnesota	11	92,544	21,770	450	164,725	43,167
Iowa	474	315,645	115,619	367	103,901	38,361
Missouri	. . .	. . .	. . .	320	218,555	49,181
Total	548	815,877	$277,853	3,432	2,965,385	$845,192

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POST-OFFICE FACILITIES IN UNITED STATES, 1909.[1]

ALL BANKS CARRYING SAVINGS ACCOUNTS			BANK AND POST-OFFICE FACILITIES RELATIVE TO TERRITORY AND TO POPULATION				
NUMBER	NUMBER OF SAVINGS DEPOSITORS	AMOUNT OF SAVINGS DEPOSITS (000)	SQUARE MILES OF TERRITORY TO EACH BANK CARRYING SAVINGS DEPOSITS	SQUARE MILES OF TERRITORY TO EACH POST OFFICE	POPULATION TO EACH BANK CARRYING SAVINGS DEPOSITS	POPULATION TO EACH POST OFFICE	NUMBER OF POST OFFICES TO EACH BANK CARRYING SAVINGS DEPOSITS
131	322,687	$118,779	228	31	5,670	760	7.5
72	197,757	84,060	125	19	5,980	897	6.7
74	178,585	65,894	123	21	4,810	804	6.0
244	2,049,137	747,150	33	10	13,800	4,250	3.3
31	192,415	116,670	34	8	17,500	4,080	4.3
98	553,901	259,718	49	12	11,400	2,840	4.0
650	3,504,482	$1,392,171	95	19	10,100	2,040	4.9
551	3,238,890	1,595,040	86	17	16,500	3,310	5.0
245	641,868	208,548	31	9	10,400	3,160	3 3
967	1,270,023	502,489	46	12	7,930	2,050	3.9
29	35,668	11,628	68	17	6,980	1,770	3.9
162	346,317	125,677	61	12	7,990	1,530	5.2
17	87,711	18,893	4	60	19,500	331,069	.06
1,971	5,620,477	$2,480,275	57	14	10,700	2,560	4.2
135	126,867	43,119	297	14	15,300	743	20.6
155	91,628	23,454	152	12	7,880	573	13.7
235	103,744	18 201	207	25	9,390	1,140	8.3
159	66,553	18,701	190	37	9,530	1,850	5.1
250	99,236	19,816	236	42	10,400	1,840	5.7
97	38,380	8,573	559	51	7,740	709	10.9
95	50,725	7,811	543	35	22,500	1,450	15.5
113	80,733	21,356	402	35	14,700	1,290	11.4
127	34,484	9,158	2,070	101	30,700	1,500	20.4
85	14,187	2,933	624	28	18,500	834	22.2
183	59,594	21,374	219	13	12,500	774	16.2
148	85,643	21,327	282	33	14,800	1,740	8.5
125	31,551	7,432	371	32	14,400	1,250	11.5
1,907	883,325	$223,255	418	35	13,600	1,120	12.1
523	861,516	274,282	78	20	9,110	2,400	3.8
333	271,221	68,885	108	28	8,110	2,110	3.8
663	821,203	258,315	84	30	8,510	2,990	2.8
443	606,989	174,438	130	39	6,340	1,900	3.3
396	324,965	79,027	137	45	5,890	1,940	3.0
461	257,267	64,937	172	60	4,500	1,580	2.8
841	419,546	153,980	66	41	2,650	1,640	1.6
320	218,555	49,181	215	31	10,300	1,490	6.9
3,980	3,781,262	$1,123,044	113	35	6,500	2,040	3.2

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TABLE I. COMPARISON OF SAVINGS-BANK FACILITIES AND OF

SECTION AND STATE	SAVINGS BANKS [2]			OTHER BANKS CARRYING SAVINGS ACCOUNTS [2]		
	NUMBER	NUMBER OF SAVINGS DEPOSITORS	AMOUNT OF SAVINGS DEPOSITS (000)	NUMBER	NUMBER OF SAVINGS DEPOSITORS	AMOUNT OF SAVINGS DEPOSITS (000)
Western States:						
North Dakota	. . .	. . .	. . .	259	23,774	$13,006
South Dakota	10	3,024	$684	246	39,988	12,389
Nebraska	11	16,846	2,618	344	50,827	21,559
Kansas	13	16,031	2,836	366	45,189	12,100
Montana	3	4,067	3,368	55	17,009	6,404
Wyoming	. .	. . .	. . .	43	6,819	2,387
Colorado	8	14,185	3,193	85	48,619	16,894
New Mexico	4	1,575	415	89	2,355	1,332
Oklahoma	. . .	. . .	. . .	194	10,507	2,475
Total	49	55,728	$13,114	1,625	245,087	$88,546
Pacific States:						
Washington	8	12,355	3,793	176	123,374	31,253
Oregon	6	3,339	1,011	72	33,945	14,031
California	122	398,026	226,123	237	127,462	55,105
Idaho	4	1,217	160	71	10,046	1,812
Utah	3	29,195	8,540	68	34,706	7,963
Nevada	. . .	. . .	. . .	19	4,657	2,400
Arizona	. . .	. . .	. . .	14	4,678	1,266
Total	143	444,132	$239,627	657	338,868	$113,830
United States (exclusive of island possessions)	[3]1,540	8,617,213	3,633,939	9,442	6,256,148	2,039,919

population of 8370 to each such bank and of 1542 to each post-office; and there are 5.4 post-offices to each bank carrying savings accounts. A comparison of the figures for the different

[1] The data upon which this table is based were derived from the following sources: banking figures, from National Monetary Commission's Special Report from the Banks of the United States, April 28, 1909; post-office figures, from *The Postal Guide*, 1909. The population figures used are those of the Thirteenth Census.

[2] The Special Report of the National Monetary Commission from which the savings figures of this table were prepared makes the following foot-note comments upon its tables: "It is evident from the returns that the direction as to what constitutes 'savings deposits' appended to the request for reports was not carefully considered by the bank officials in all instances, as certificates of deposit, both time and demand,

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POST-OFFICE FACILITIES IN UNITED STATES, 1909.[1]—*Concluded.*

ALL BANKS CARRYING SAVINGS ACCOUNTS			BANK AND POST OFFICE FACILITIES RELATIVE TO TERRITORY AND TO POPULATION				
NUMBER	NUMBER OF SAVINGS DEPOSITORS	AMOUNT OF SAVINGS DEPOSITS (000)	SQUARE MILES OF TERRITORY TO EACH BANK CARRYING SAVINGS DEPOSITS	SQUARE MILES OF TERRITORY TO EACH POST OFFICE	POPULATION TO EACH BANK CARRYING SAVINGS DEPOSITS	POPULATION TO EACH POST OFFICE	NUMBER OF POST OFFICES TO EACH BANK CARRYING SAVINGS DEPOSITS
259	23,774	$13,006	271	74	2,230	606	3.7
256	43,012	13,073	300	113	2,280	861	2.6
355	67,673	24,177	216	77	3,360	1,200	2.8
379	61,220	14,936	216	67	4,460	1,400	3.2
58	21,076	9,772	2,510	240	6,480	622	10.4
43	6,819	2,387	2,270	253	3,390	378	9.0
93	62,804	20,087	1,110	127	8,590	978	8.8
37	3,930	1,747	3,310	207	8,850	553	16.0
194	10,507	2,475	360	51	8,540	1,210	7.0
1,674	300,815	$101,660	504	111	4,390	967	4.5
184	135,729	35,045	363	66	6,210	1,130	5.5
78	37,284	15,042	1,210	125	8,630	891	9.7
359	525,488	281,228	435	93	6,620	1,140	4.7
75	11,263	1,972	1,120	154	4,340	596	7.3
71	63,901	16,503	1,160	247	5,260	1,120	4.7
19	4,657	2,400	5,770	453	4,310	338	12.7
14	4,678	1,266	8,060	417	14,600	754	19.4
800	783,000	$353,456	883	146	6,470	1,070	6.0
10,982	14,873,361	5,673,861	270	50	8,370	1,542	5.4

sections and states shows that it is in the southern, western and Pacific states that savings-bank facilities are most lacking. The southern states average one bank for every 418 square miles of

appear to have been included in savings deposits. While the number of savings and other depositors in each and all classes of banks is stated and believed to be approximately correct, it should be borne in mind that doubtless in many instances the same individual may have a checking and a savings deposit account in the same or different banks and in the report he may have been treated as two or more depositors. It is probable, however, that such duplications may be offset to a great extent by the number of depositors in banks from which returns were not received."

[3] Of 1540 savings banks, 627 were mutual savings banks and 913 were stock savings banks; 189 savings banks were in reserve cities.

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TABLE II. COMPARISON OF SAVINGS-BANK AND POST-OFFICE FACILITIES IN RESERVE CITIES AND IN THE REST OF THE UNITED STATES, BY GEOGRAPHIC SECTIONS, 1909.

	RESERVE CITIES			OUTSIDE OF RESERVE CITIES				
SECTIONS	NUMBER OF BANKS	NUMBER OF DEPOSITORS	AMOUNT OF DEPOSITS (000)	SQUARE MILES TO EACH BANK	POPULATION TO EACH BANK	SQUARE MILES TO EACH POST OFFICE	POPULATION TO EACH POST OFFICE	POST OFFICES TO EACH BANK
New England	20[1]	613,363	$211,425	98.3	9,340	19	1828	5.1
Eastern	258[2]	2,999,591[3]	1,438,317[4]	65.0	7,770	14	1612	4.8
Southern	51	115,963	38,915	429.6	13,400	35	1080	12.4
Middle-Western	250[5]	1,577,369[6]	502,992[7]	119.9	5,316	35	1563	3.2
Western	57	85,217	26,005	522.0	4,117	111	876.6	4.7
Pacific	115	436,591	222,954	1031.0	5,426	146	769.1	7.0
United States	751	5,828,094	2,440,608	290.0	7,258	49	1245	5.8

[1] All were in Boston.
[2] Of this number 79 banks were in New York City and Brooklyn, and 63 were in Philadelphia.
[3] Of these 2,350,359 were in New York City, Brooklyn and Philadelphia.
[4] Of this sum, $1,155,370,772 was in New York City, Brooklyn and Philadelphia.
[5] 76 were in Chicago and St. Louis.
[6] Of these, 625,601 were in Chicago and St. Louis.
[7] Of this sum, $190,864,497 was in Chicago and St. Louis.

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territory and one post-office for every 35 square miles, one bank for every 13,600 persons and one post-office for every 1120; the western states average one bank for every 504 square miles and one post-office for every 111, one bank for every 4390 persons and one post-office for every 967; the Pacific states average one bank for every 883 square miles and one post-office for every 146, one bank for every 6470 persons and one post-office for every 1070. The New England, eastern and middle-western states are much better provided with banking facilities than are the other sections; but even in these states post-office facilities are much more ample than savings-bank facilities.

The case in favor of the post-offices is really much stronger than a first glance over Table I would seem to show. In the first place, the banks receiving savings are largely massed in the cities, each city of importance having a number of such institutions, while the post-offices are widely scattered, no city having more than one independent post-office. In the second place, it should be noted that if the postal savings banks should prove a success, depositories would almost certainly be established in numerous sub-stations, not included in the figures given in the table, while mail carriers on rural free-delivery routes might well be authorized to receive deposits for the postal savings banks, as in Holland,[1] Belgium[2] and France.[3] For the fact that banks receiving savings deposits are to a considerable extent massed in the larger cities allowance may be made, with some approach to accuracy, by deducting the figures for "reserve cities," which are fortunately given in the National Monetary Commission's Report, and considering the rest of the country separately. The result of such a deduction is shown in Table II.[4]

Conclusions based upon averages of the kind given in these two tables must of course be made cautiously, for the figures

[1] J. H. Hamilton, Savings Institutions, p. 378. [2] *Ibid.* p. 365.

[3] Notes on the Postal Savings Bank Systems of the Leading Countries. National Monetary Commission, p. 13.

[4] The sources of the figures are the same as for Table I.

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are not complete and the possible "fallacy of averages" is well known. I believe, however, that the figures are sufficiently complete, and the "story of the averages" sufficiently truthful, to justify the conclusion that the country is many times over better provided with post-office facilities than with savings-bank facilities, and that this is particularly true of the southern, western and Pacific states.

An objection repeatedly urged against the establishment of a postal savings bank was that it would prove a competitor to existing banks. The fear of such competition appears to have been the chief cause of the opposition of most members of the banking fraternity to all postal savings-banks proposals.[1] Senator Cummins of Iowa said in the Senate:

> The banks of the United States are opposed unanimously to the institution of a postal savings system. . . . I venture the assertion that during the nearly two years that I have been a member of this body . . . I have received the protests of nearly every bank in my state against any such scheme, and those protests have usually been accompanied by a very large number of petitions, secured, I have no doubt, through the industry and energy of the bank officers.[2]

It was argued that postal savings banks would have an undue advantage over private institutions because of the great confidence in the government entertained by working people; and it was asserted that funds would be withdrawn from existing banks and deposited in the postal savings banks. On this point the experience of England was repeatedly cited, where there

[1] The American Bankers' Association was very active in its opposition to a postal savings bank. A committee on postal savings banks of the savings-bank section of the association carried on for nearly three years an active propaganda against postal savings-bank legislation, distributing over the country an immense amount of literature and maintaining an active opposition at Washington. *Cf. Chronicle*, Bankers' Convention Supplement, 1909, pp. 207, 208, 211. The following resolution of the American Bankers' Association at its convention of 1908 (*Chronicle*, Supplement, 1908, p. 131) is fairly representative of the attitude of that association and of numerous state bankers' associations throughout the country: "Resolved, that it is the sense of this association that we should condemn in unqualified terms the proposition for the establishment of postal savings banks or any other system by which the government enters directly into banking relations with the people."

[2] *Congressional Record*, June 20, 1910, pp. 8811, 8812.

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was a "marked tendency" for the postal savings bank "to absorb the patronage that had been built up by the trustee banks. . . ."[1] In reply, the advocates of postal savings banks claimed that existing banks had nothing to fear from governmental competition; that they had the advantages of an established clientèle, higher interest rates, higher limits, if any, in the amounts that could be kept on deposit, and of the close personal and advisory relation which so often exists between a bank and its customers. They further argued that postal savings banks would be a help rather than a hindrance to other banks. They would educate the people to habits of thrift and would draw money out of hoards; and the deposits which they received would for the most part be transferred to other banks as soon as the limit fixed for postal savings-bank deposits should be reached, or even before, as the depositor began to appreciate the safety of other banks and the advantage of their higher rate of interest. If the postal savings banks were serious competitors of the trustee banks in England, it was pointed out that this was largely because of the shortcomings[2] of these private banks; in most other countries, notably in Italy,[3] the Netherlands,[4] France[5] and Hungary,[6] they had been found to be not competitors but co-workers.

The immediate occasion of the last active movement for a postal savings-bank system in the United States was, as we have seen, the losses and inconveniences arising from bank failures and from the suspension of cash payments in the panic of 1907. Naturally, therefore, the demand for greater safety of savings deposits played an important part in the discussion.

The advocates of postal savings banks cited figures showing the number of national-bank failures and the losses involved,

[1] Hamilton, Savings Institutions, p. 354. *Cf.* also William Lewins, History of Savings Banks, pp. 322 *et seq.*

[2] *Cf.* Lewins, chaps. 6, 7 and pp. 322 *et seq.*

[3] Hamilton, p. 373; also House Report no. 1445, 61st Congress, Third Session, p. 2.

[4] Hamilton, p. 380.

[5] *Ibid.* pp. 381, 383.

[6] E. T. Heyn, *Annals of the American Academy of Political and Social Science*, vol. viii, p. 488.

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and similar figures for savings-bank failures in certain states. They made much of the large amounts involved and of the hardships in individual cases. On the other hand, the opponents of the postal savings-bank scheme quite generally dealt with percentage figures rather than with absolute amounts and showed that for recent years the average losses, in terms of percentage of the amounts on deposit, were almost infinitesimal.

The figures cited for bank failures, so far as they relate to savings deposits, are so incomplete as to be of doubtful value in measuring the extent of the losses.[1] Those given by the comptroller[2] show that during the eighteen years, 1892–1909, there were in the United States 1523 bank failures (exclusive of national banks), with total assets of $457,640,000 and total liabilities of $565,345,000. In these figures are included 153 failures of banks which were strictly savings banks, with assets of $47,717,000 and liabilities of $51,786,000. Within the same period 344 national banks failed (exclusive of those restored to solvency and permitted to resume business within a year of report). In these national-bank failures the net loss to depositors so far reported (the data relative to losses are still incomplete) has been $16,806,062.[3] Doubtless a considerable percentage of this sum represented small accounts of a saving or "semi-saving" character; how much, we do not know.

After all, such figures give us no adequate measure for losses of this kind. "Among the experiences of working people none is more demoralizing and few are more cruel than loss of savings through failure of banks or absconding of individuals intrusted with funds."[4] To such people there is cold comfort in the assurance that the average loss of savings-bank depositors over a long period of years is but a fraction of a mill on a dollar. The loss is theirs: it is not distributed among all depositors.

[1] Commenting upon this subject, Miss Florence Kelly recently said: "It is one of the gross sins of omission of our government (state and federal) that we have no trustworthy data as to the extent of these losses year by year." *Charities*, vol. xxi, p. 718.

[2] Report, 1909, p. 69.

[3] National Monetary Commission, Statistics for the United States, 1867–1909, pp. 40, 41.

[4] Florence Kelly, in *Charities*, vol. xxi, p. 718.

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In urging that a postal savings bank would draw money from hoards into circulation, the advocates of the scheme claimed also that such a bank would keep in the United States money that would otherwise be sent abroad by foreigners. Although numerous estimates—more correctly, guesses—have been made from time to time as to the amount of hoarded money in the United States, we have no information of value on this subject. The distrust which causes hoarding makes it impossible to secure information concerning the amount hoarded. Much was made of the fact that every year many millions of dollars in money orders payable to self are bought for savings purposes. The number so bought in first and second class post-offices alone for the year ending March 1, 1908, was 127,623, representing a total value of $8,054,894.[1] In such cases the purchaser not only failed to receive any interest on his savings but was required to pay the money-order fee. Many immigrants, moreover, distrust American banks, and, being familiar with postal savings banks in their home countries and having great confidence in government institutions, remit their savings to these home banks. How extensively this is done we have no figures to show.[2]

Passing now from these general arguments, which played an important rôle in the agitation for a postal savings-bank system, we may proceed to a study of the chief provisions of the Postal Savings Bank Act as finally passed. These will be taken up in the following order: (1) administrative organization; (2) deposits and withdrawals; (3) rate of interest; (4) disposal of funds, including investment and deposit in banks, and the question of constitutionality, which is closely related to the subject of the investment of funds; (5) expense of administration.

Administrative organization

For "the control, supervision, and administration of the postal savings depository offices" and of the funds received on depo-

[1] House Document no. 1445, 61st Congress, Second Session, p. 93.

[2] *Cf.* George von L. Meyer, "Postal Savings Banks"; *North American Review*, vol. clxxxviii, pp. 250–252.

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sit, the first section of the act creates a Board of Trustees, consisting of the postmaster-general, the secretary of the treasury and the attorney-general. On these trustees is conferred "power to make all necessary and proper regulations for the receipt, transmittal, custody, deposit, investment and repayment of the funds deposited at postal savings-depository offices." This board is somewhat similar to the Postal Savings Bank Investment Board of the Philippines.[1] The three officials are supposed to represent respectively three important aspects of postal savings-bank work, administrative, financial and legal. The establishment of a postal savings bank in the United States was looked upon by many of its sponsors as an experiment, and it was clearly the intention of Congress to give wide discretionary powers to the Board of Trustees, so that they might feel their way carefully in extending and developing the system.[2] As it passed the Senate, the bill contained no provision for a Board of Trustees with wide discretionary powers but placed the administration in the hands of the postmaster-general. This likewise was the plan in the substitute bill recommended to the House by the minority of the Committee on Post-Office and Post Roads.[3] The minority claimed that the creation of a Board of Trustees was unnecessary, that it complicated the administration, and that the board as created was given too much power, particularly in the selecting of post-offices to be postal savings depositories.

The desire to give wide discretionary power to the administration, which was held to require the change from a single head to a Board of Trustees, finds expression in the provision for opening postal depositories. As the bill came from the Senate to the House, it provided for the establishment at once of postal savings depositories in all first, second and third-class post-offices; while the bill as it passed the House and finally became law merely authorized the Board of Trustees "to desig-

[1] Kemmerer, "The Philippine Postal Savings Bank"; *Annals of the American Academy of Political Science*, vol. xxx, no. 1, p. 48.

[2] *Cf.* House Report no. 1445, to accompany S. 5876, 61st Congress, Second Session, pp. 1, 2.

[3] *Ibid.* p. 103.

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nate such post-offices as it may select to be postal savings-depository offices" (section 3). On this point the bill met vigorous opposition. It was urged that this was a dangerous power to confer upon an administrative board of political appointees; that political motives would dictate the selection of places for postal savings depositories; and that the banking interests, with their powerful and organized opposition to postal savings banks, would be able to bring sufficient pressure on the Board of Trustees to prevent it from establishing depositories in important places.[1]

By the time the Postal Savings Bank Act had been on the statute books a little over eight months, it was found that much delay was occasioned by the inability of the three members of the Board of Trustees to get together promptly when needed. The law was accordingly changed by the Post-office Department Appropriation Act of March 4, 1911, and now gives to the postmaster-general full authority with reference to the designation of postal savings depositories, the making of rules concerning the deposit and withdrawal of funds, and most other matters originally entrusted to the Board of Trustees, except the matter of the control and investment of money after it has been deposited.

Deposits and withdrawals

The limitations fixed by the law with reference to the character of deposits and the persons from whom deposits are receivable conform fairly closely to the practices prevailing in other countries. Accounts may be opened by any person ten years of age or over, but no person shall have more than one postal savings account at one time. Deposits are received only in sums of a dollar or multiples thereof; no one is permitted to deposit more than one hundred dollars in any one calendar month; and the balance to the credit of any one person shall never be allowed to exceed five hundred dollars, exclusive of

[1] Opponents of the bill called attention to the fact that the chairman of the Board of Trustees, *i. e.* the postmaster-general, was the head of a department which had a large amount of political patronage, and that the present postmaster-general had recently been chairman of the Republican National Committee.

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accumulated interest. It is obvious that these restrictions are made for the purpose of confining the use of postal savings depositories to small savings and of preventing them from competing with banks for the savings of well-to-do depositors. To encourage petty savings, particularly among children, postal savings stamps in denominations of ten cents are sold, which, when pasted upon a card provided for the purpose, may be deposited in sums of one dollar. Instead of giving the card free, as is the custom in most countries, and providing for the attaching to it of adhesive stamps to the full amount, there is an interesting innovation in the arrangement that the card is sold for ten cents and requires the attachment of only nine ten-cent stamps to bring the value to a dollar.

There is little that is noteworthy in the provisions for withdrawing funds. A depositor may withdraw all or any part of his funds upon demand,

> under such regulations as the Board of Trustees may prescribe. Withdrawals shall be paid from the deposits in the State or Territory, so far as the postal funds on deposit [in banks] in such State or Territory may be sufficient for the purpose, and, so far as practicable, from the deposits in the community in which the deposit was made [section 8].

This latter provision is of course part of the arrangement for keeping "at home" money deposited in the postal savings bank. Funds to meet withdrawals are to be paid by postmasters out of their daily postal receipts. Each depository, moreover, is to keep a small working balance to its credit at a local or neighboring bank. The size of this "emergency credit" is determined for each depository by the Board of Trustees and may be increased or diminished at the discretion of the board. "If the emergency credit is insufficient to meet the demands of his office, he [the postmaster] must immediately report the fact to the Board of Trustees, which reserves the right to defer payment until the necessary funds can be furnished the postmaster."[1] A five-per-cent reserve against all deposits is kept by the trustees at the Treasury in Washington (section 9).

[1] Postal Savings System Regulations, promulgated by authority of the Board of Trustees, section 16.

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Thus postal savings depositories are protected against dangers arising from sudden runs by a fourfold arrangement. In the first place, the postmaster has the use of his daily cash balance; in the second place, he has an elastic "emergency credit" at a neighboring bank; in the third place, there is a five-per-cent cash reserve kept in the Treasury of the United States; and, in the fourth place, there is the provision that payment to depositors may be deferred. These safeguards (interpreted in connection with the investment of funds to be referred to later,[1]) would seem to be more than ample to meet any probable emergency. In England there is no special reserve requirement for postal savings-bank deposits, and the amount of cash kept on hand is very small.[2] This appears to be the rule in most other countries. If we consider the practice in the United States in the matter of savings-bank reserves and select for comparison the most conservative class of savings banks, *i. e.* mutual savings banks, in the two states where they are most numerous, we find that in 1910 the 190 mutual savings banks of Massachusetts, with over three-quarters of a billion dollars of deposits, kept a cash reserve of less than one-fourth of one per cent and a reserve of cash on hand and on deposit in other banks of 2.25 per cent; and that in the same year the 142 mutual savings banks of New York state, with over a billion and a half of deposits, held a cash reserve of less than nine-tenths of one per cent and a reserve of cash on hand and in banks of but 6.3 per cent. The 638 mutual savings banks of the entire United States, which reported to the comptroller in 1910, with total deposits of $3,361,000,000, had cash on hand of but $24,463,000, or about three-fourths of one per cent, and cash on hand plus net cash in banks of but $117,525,000, or about 3.5 per cent.[3]

[1] *Cf. infra*, pp. 490, 491.

[2] In 1903 it was 0.12 of one per cent of liabilities; in 1904, 0.23; and in 1905, 0.32. *Bankers' Magazine* (London), vol. lxxxii, p. 402. The *Economist*, in criticizing the postal and trustee savings banks of England, said, a generation ago: "Neither of them keeps any reserve of ready cash and both of them are entirely dependent on the sufficiency or insufficiency of the banking department of the Bank of England." Vol. xxxiii, p. 633.

[3] Comptroller's Report, 1910, pp. 738, 739.

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In connection with the matter of deposits and withdrawals two more or less controversial questions arose. The first was: should the administrative system be highly centralized, as in England and in the Philippines, so that records should be kept at the central office, where deposits would be credited and to which application must be made through a postal savings bank for the withdrawal of funds; or should the system be less centralized, the local postmaster keeping records of individual accounts, crediting deposits and paying withdrawals directly? The first plan, which is carried most nearly to its logical consequences in the Philippines, and which was embodied in the bill introduced by Senator Carter, April 2, 1908 (S. 6484), was said to have the advantage of greater safety, because responsibility for large sums of money would not be placed upon postmasters in all parts of the country. The centralized plan would also make it possible for a depositor to make deposits to the credit of his account at any depository in the country and to withdraw funds through any depository. The second plan, which was adopted, offers the advantages of much prompter service and probably of greater economy in administration, because much of the work which would otherwise require a large force of clerks at Washington can be done with little extra expense by local postmasters. A high degree of centralization in such matters is much more difficult in a country of great distances like the United States than in a country like England. Even in England, moreover, the extreme centralization of the postal savings-bank system is breaking down; for since 1905 it has been possible in England to withdraw on demand from the local office sums not exceeding one pound.[1]

The second controversial question with reference to deposits and withdrawals, which is closely related to the first, is a question of the form in which the depositor's account shall be kept: whether by pass book or by some kind of certificate of deposit. In all other countries, so far as the writer knows, the depositor's account is evidenced to him in the form of a pass book, in which debits and credits are entered and balances struck. This

[1] Senate Document no. 658, 61st Congress, Third Session, p. 25.

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method was proposed for adoption in the majority of the postal savings-bank schemes which received the serious attention of Congress. It was proposed in the bill which became law, as this bill originally passed the Senate. The other plan, that of evidencing the account by some sort of certificate of deposit, was urged for the United States on the grounds that it would be simpler, easier and more economical of administration and less open to mistakes and to fraud.[1] After considerable discussion of the comparative merits of these plans, Congress decided to leave the decision of this question to the Board of Trustees (section 5). The decision of the board was in favor of a simple form of certificate. To quote from the recently issued circular of information for depositors:

> Deposits are evidenced by postal savings certificates issued in fixed denominations of $1, $2, $5, $10, $20 and $50, each bearing the name of the depositor, the number of his account, the date of issue, the name of the depository office and the date on which interest begins. The postmaster or his representative will make out a duplicate of each certificate issued, which the depositor will be required to sign and which the postmaster will retain in his records [paragraph 11].

The old certificate is canceled and a new one given out at the time of each deposit (except interest credits) and at the time of each withdrawal. There seems to be little room for question that the certificate plan possesses the advantages claimed for it, *viz.* simplicity and economy of administration.

Rate of interest

The question of the rate of interest to be allowed to depositors naturally resolves itself into two questions: How shall the rate of interest be determined and what rate shall be adopted?

Taking up these questions in their order, it may be noted

[1] It was also advocated on the ground that certificates might serve as a medium of exchange in times of panic and give greater elasticity to our currency. *Cf. Albany Law Journal*, vol. lxx, pp. 346, 349. Among the certificate plans proposed the most unique and interesting was that embodied in the Burton bill; House Report no. 21263, 60th Congress, First Session. The form of certificate proposed in that bill is described by Mr. Charles Hall Davis, in the *Albany Law Review*, vol. lxx, pp. 344 *et seq.*

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that, while in most countries the rate is fixed by law, in some, as for example in Italy, in Tasmania and in the Orange River Colony, the rate is fixed by administrative authority and varies from time to time according to the earnings realized on the bank's investments. Hamilton,[1] commenting upon the Italian method, says: "In fixing the rate of interest to be paid to depositors, the Italian government has followed the true principle of savings-bank management, *i. e.* the rate is not fixed permanently, but it is determined from time to time by the earning power of the deposits." In the discussions in this country, both in Congress and outside, it seems to have been generally taken for granted that the rate of interest would be fixed by law. This plan appears to be the more reasonable one, when we consider that the postal savings bank was looked upon primarily as an institution for the encouragement of small savings—an institution which would serve as a sort of feeder to other savings banks and other forms of investment where the interest yield would be higher. Furthermore, there are obvious political objections to placing in the hands of a politically partisan authority like the Board of Trustees the responsibility of determining from time to time the rate of interest to be paid on the savings of depositors who presumably will soon be numbered by millions.

The second phase of the interest question is that of the rate itself. There were several obvious reasons for a relatively low rate of interest. (1) It was generally admitted that the postal savings-bank system should be practically self-supporting and that the investment of its funds should be absolutely safe. This meant that the interest rate paid to depositors must be lower than that realizable on high-grade investments by a percentage sufficient to meet administrative expenses. (2) The proponents of postal savings banks were very positive in their claim that these banks would be feeders of other banks rather than competitors. Had not this contention been widely accepted as true, it is very doubtful if a postal savings-bank act could have been passed. If postal savings banks were not to compete with

[1] Savings Institutions, p. 370.

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other banks, and if individual deposits, as soon as they reached substantial amounts, were to be transferred to other banks, the interest rate paid by postal savings banks must obviously not be as large as that paid by the best savings banks in the most populous sections of the country.[1] (3) If the rate of interest should be fixed too high at first, as for example in Canada,[2] it would be difficult to reduce the rate, because of political pressure; if, on the other hand, experience should prove the rate to be too low, as has recently been discovered to be the case in the Philippines,[3] it could readily be raised. These considerations led to the selection of the rate of two per cent, "the same to be computed on such basis and under such rules and regulations as the Board of Trustees may prescribe" (section 7). This rate is a low one as compared with that paid in other countries. It is in fact the lowest rate paid on savings deposits by any postal savings bank in the world.[4] The United Kingdom pays 2.5 per cent, Canada 3 per cent, France 2.5 per cent, Japan 4.2 per cent, Austria 3 per cent, Hungary 3 per cent, Sweden 3.6 per cent and the Philippine Islands 2.5 per cent. When it is remembered that the prevailing rate of interest is normally higher in the United States than in most countries of Europe, it is clear that Congress has not erred in the direction of fixing too high a rate.

Under the authority (section 7) to prescribe rules and regu-

[1] The National Monetary Commission, in its Special Report from Banks of the United States, as of April 28, 1909 (pp. 36–46), tabulates the average rate of interest paid on savings accounts by the different kinds of banks in the various states. These figures show the average rate paid by mutual savings banks in all states to be 3.85 per cent, the lowest average in any state being in Pennsylvania, 3.32 per cent, and the highest being in West Virginia (only one bank), 4.5 per cent. The average rate paid by national banks in all states is 3.34 per cent, the average local rates ranging from 4.66 per cent in North Dakota to 2 per cent in the District of Columbia. The average rate paid by state banks is 3.71 per cent, the average local rates ranging from 5.14 per cent in North Dakota to 2.62 per cent in Delaware. The average rate paid by stock savings banks is 3.60 per cent, the average local rates ranging from 4.35 per cent in Georgia to 2.71 per cent in the District of Columbia.

[2] Hamilton, Savings Institutions, pp. 415–419.

[3] Report of the Chief of the Bureau of Insular Affairs, 1910, p. 6.

[4] See tables following p. 128, Senate Document no. 658, 61st Congress, Third Session.

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lations regarding the computation of interest, the board has decided that compound interest shall not be allowed on an outstanding certificate, but that a depositor may withdraw interest payable and include it in a new deposit, which will bear interest at the regular rate; and that no interest shall be paid on money which remains on deposit for a fraction of a year only. These restrictions appear on their face rather petty; they must be justified, if at all, on purely administrative grounds.

Investment of funds

Perhaps the most difficult question to solve in connection with the establishment of a postal savings-bank system in the United States was that of the investment of its funds. In most countries postal savings-bank funds are invested in the public debt. The facts that the public debt in the United States is small, that it is not looked upon as permanent and that it is so largely used as a security for bank-note circulation under our peculiar national banking system have for years been obstacles to the establishment of postal savings-banks.

Any feasible plan for the investment of funds, it was felt, must meet at least the following requirements: (1) the investments must be safe; (2) they must yield a sufficient rate of interest to pay the interest due to depositors and the expenses of administration; (3) the funds must be kept for the most part in the local communities where the deposits are received; (4) the investments must take such a form as to make the postal savings-bank system constitutional. In the light of these postulates, let us consider some of the salient points in the history of the investment provisions of the Postal Savings Bank Bill in the progress of that bill through Congress.

According to the bill as it stood a few days before its first passage in the Senate, the funds received on deposit were normally to be deposited (except for a small cash reserve fund at Washington), at not less than two and one-fourth per cent interest, in banks situated in the locality where the deposits were received, "substantially in proportion to the capital and surplus of each such bank"; and the money was not to be withdrawn except to pay depositors when demanded. These

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deposits were to be secured by such indemnity bonds as the Board of Trustees might prescribe. A bank might deposit acceptable collateral in lieu of an indemnity bond. These provisions appeared to a majority of the Senate to meet the requirements of safety and of an adequate interest yield, and to keep the funds in the local community as effectually as any plan that could be devised. Shortly before the bill came to its vote in the Senate, however, it was vigorously attacked on the ground of unconstitutionality, particularly by Senators Rayner, of Maryland, Bailey, of Texas, and Root, of New York; the principal defenders of the constitutionality of the bill were Senators Sutherland, of Utah, and Bradley, of Kentucky. The constitutional arguments were on an unusually high plane. The constitutionality of the bill was defended, of course, under the doctrine of implied powers. Ignoring the discussion over the "welfare clause" of the Constitution, which on the one side was interpreted to mean almost everything and on the other side to mean almost nothing, we find the proponents of constitutionality basing their arguments chiefly on three clauses of the Constitution. (1) The power "to coin money" and "regulate the value thereof" was to be interpreted "to confer upon Congress the power not only to coin money but to provide and maintain an adequate currency for the country." Postal savings banks would be a proper means to that end, since they would call money out of hoards and keep it in circulation.[1] (2) The power "to regulate commerce . . . among the several states" justified the establishment of a postal savings-bank system, since these banks would assist interstate commerce in a most vital way, in bringing money into circulation and providing for the people an adequate supply of currency.[2] (3) The power "to establish post-offices and post-roads," Senator Sutherland further contended, has been broadly interpreted and acted upon as though it read: "Congress shall have power to establish, organize and define the functions of a postal department." In no other way can the broad powers now exercised

[1] Senator Sutherland, *Congressional Record*, March 2, 1910, pp. 2652, 2653.

[2] *Ibid.* pp. 2653, 2654.

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by the Post Office Department be justified—powers such as that of the postmaster-general to negotiate and conclude postal treaties and conventions with foreign countries, and that of providing for the issuing of money orders, both foreign and domestic.[1]

To these arguments the most effective reply was that made by Senator Bailey. No power, he maintained, had been conferred upon Congress to establish institutions for the encouragement of economy and thrift, which was the real and declared purpose of the proposed legislation. Nor could such a power be brought by implication under any power expressly conferred upon the federal government. Under the coinage clause, he said, Congress has the power and the duty to provide the country with an adequate circulation, but when it "has exercised that power and performed that duty and the money so coined or issued has passed into the hands of the individual citizen, it is his private property and he has a right to do whatever he pleases with it."[2] With reference to the claim that the right to establish a postal savings-bank system was implied in the commerce clause of the Constitution, Senator Bailey said:

> Banking is not commerce; but . . . if it were admitted that the banking business is commerce within the meaning of the Constitution, such an admission would not justify this bill, because the only commerce which is subject to federal regulation is a commerce among the several states, or with Indian tribes, or with foreign nations. . . . To receive money at the post-office and to deposit it in a bank situated in the same community is not commerce at all; and certainly it is not interstate or foreign commerce.[3]

With reference to the claim that the right of Congress to create a postal savings bank was implied in the power conferred by the Constitution to establish post-offices and post-roads, he said:

> There is absolutely no pretence that the deposit of private money with a postmaster, and the redeposit of it by him in a bank, has, or is intended to have, any connection with the use of the mails. It is a fiscal

[1] *Congressional Record*, March 3, 1910, p. 2655.

[2] *Ibid.* March 3, 1910, p. 2689.

[3] *Ibid.* pp. 2687, 2688.

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operation pure and simple, without the remotest relation to a post-office or a post-road as they were understood by the fathers when they framed our Constitution or as they are understood by us today. The Congress of the United States has just as much right and power to require our postmasters to act as commission merchants as it has to require them to act as bankers.[1]

The constitutional status of the bill seemed weak even to many of its proponents, and a number of amendments were proposed calculated to give it a firmer position. These amendments for the most part undertook to make the bank more of an instrument for the borrowing of money by the federal government, and thereby to bring it under the constitutional power "to borrow money on the credit of the United States." Some of these amendments went much farther than others; but the so-called Smoot amendment appeared to be the only one which could at the same time accomplish the purpose of making the bill constitutional and command a majority vote of the Senate. This amendment provided:

That when, in the judgment of the President, war or any other exigency involving the credit of the Government so requires, the Board of Trustees may withdraw all or any part of said funds from the banks and invest the same in bonds or other securities of the United States.[2]

Senator Root said:

I deem it my duty, in governing my own conduct and in expressing my opinions regarding this bill to my fellow Senators, to say that, without the amendment that I introduced or some one of these other amendments embodying the idea of investment in government bonds, the bill is not within the constitutional power of Congress. I do not think that as it now stands it can be brought within the just description of any means necessary and appropriate or adapted or suitable or tending toward the exercise of any of the powers conferred.

Senator Root thought that the Smoot amendment, although not satisfactory to him, would

furnish probably a constitutional basis for the proposed legislation, be-

[1] *Congressional Record*, March 3, 1910, p. 2688. [2] *Ibid.* p. 2720.

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cause it would present a purpose on the part of Congress to gather these earnings from the people and put them in such a position that the Government can call upon them whenever it has real need.[1]

Senator Bailey admitted that the proposed amendment might make it possible for the court to hold the bill constitutional, but he declared that

> it would still be none the less unconstitutional, according to the conscience of every Senator, because we all know that its purpose is not to borrow money, and to incorporate such a provision in it would be a palpable subterfuge invented to deny the court the right to consider the bill according to its real purpose.[2]

The Smoot amendment passed the Senate; but its further consideration here is unnecessary because of the radical changes in the investment provisions of the bill which were made in the House. By these changes the bill was greatly strengthened in its constitutional position, under the clause conferring upon Congress the power to borrow money on the credit of the United States. It was strengthened, however, at the expense of that other requirement which so many believed essential to a satisfactory law, *i. e.* the requirement that the moneys deposited in postal savings banks should be kept as far as possible in the local communities where the deposits were made. Postal savings bank funds (section 9) are divided into three parts: (1) The five-per-cent reserve fund, already mentioned,[3] to be kept in lawful money in the Treasury of the United States. (2) A sum normally amounting to 65 per cent of the amounts received on deposit, to be kept in solvent banks, organized under national or state laws. This portion is to be deposited, in each city, town or village where received, in banks located therein and willing to receive such deposits under the terms of the act and the regulations made under its authority[4]; and such local

[1] *Congressional Record*, March 4, 1910, p. 2761.

[2] *Ibid.* March 3, 1910, p. 2688.

[3] *Supra*, pp. 480, 481.

[4] Section 9 of the act further provides: "If no such bank exist in any city, town, village, or locality, or if none where such deposits are made will receive such deposits on the terms prescribed, then such funds shall be deposited under the terms of this

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deposits are to be made substantially in proportion to the capital and surplus of each such bank. (3) A sum not exceeding 30 per cent of the amount of postal savings funds, which "may at any time be withdrawn by the trustees for investment in bonds or other securities of the United States. . . ."

Any or all of the funds on deposit in banks "may be withdrawn for investment in bonds or other securities of the United States, but only by direction of the President, and only when, in his judgment, the general welfare and the interests of the United States so require." The provision in the Senate bill, that banks might give indemnity bonds as security for deposits of postal savings-bank funds, was cut out, and in its place was inserted the provision: "The Board of Trustees shall take from such banks such security in public bonds or other securities, supported by the taxing power, as the board may prescribe, approve, and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand."

These provisions for the regular or contingent purchase of government securities were supported on the following grounds: the greater safety of the funds invested in government bonds or secured by them; the stronger constitutional position given to the bank; and the fiscal advantage to the government in times of emergency. They were opposed principally on the ground that they would result in the withdrawal of funds from the local communities and their transfer to financial centers.[1]

Act in the bank most convenient to such locality. If no such bank in any State or Territory is willing to receive such deposits on the terms prescribed, then the same shall be deposited with the treasurer of the Board of Trustees, and shall be counted in making up the reserve of five per centum."

[1] *Cf.* views of minority members of Senate Committee on Post-Office and Post-Roads, House Report no. 1445, 61st Congress, Second Session, pp. 102, 103. Senator Heyburn of Idaho said, referring to the bill in its final form, a few days before it became law: "This is a through ticket to the money of the country to New York. There is no return ticket in this bill." *Congressional Record*, June 20, 1910, p. 8816. See also the speech of Senator Bacon of Georgia. *Ibid.* June 21, p. 8947.

For a criticism of postal savings banks on the ground that they will draw money away from local investments, where it is most needed, and cause it to flow into investments of a national character bearing low rates of interest, see article by George E. Roberts in *North American Review*, February 15, 1907.

The provision that the funds deposited in banks might be withdrawn and invested

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In view of the great mobility of moneyed capital, it must be very doubtful whether the postal savings bank will succeed in keeping its funds in the communities where the deposits are received through the expedient of redepositing about two-thirds of them in local banks. As security for these deposits, the local banks must purchase satisfactory "public bonds or other securities supported by the taxing power." In a very considerable proportion of cases, certainly, these will not be local securities, nor will they be securities which otherwise would have been purchased by the banks. Once received on deposit in the local banks, postal savings-bank funds, like other funds, will seek the best market, whether that market be in the local community or in one of the great money centers. At certain seasons of the year it will normally be in one and at certain other seasons in the other.[1] The mobility of moneyed capital is by no means perfect; under our highly decentralized banking system it is very imperfect, as is shown by the differences of interest rates on investments of similar safety in different parts of the United States. Even here, however, moneyed capital seems to flow from the cheaper to the dearer market more readily than does any other class of economic goods. The differences in interest rates on similar security in different sections of the country are apparently breaking down; and it is the expectation of many that they will be largely obliterated by the banking reforms soon to be proposed by the National Monetary Commission. It is very questionable whether it would be desirable, if it were possible, for postal savings-bank restrictions to keep the money received on deposit in the local communities where it is received, in case legitimate demands for capital should give it a substantially higher value elsewhere. It is not to be desired that capital be prevented from flowing to the best market, but that the "rules of the game" be so improved that the best market will always be a legitimate market.

in United States securities by direction of the president, whenever in his judgment the general welfare so required, was strongly criticized on the ground that it placed a large and dangerous power in the hands of the president.

[1] *Cf.* Kemmerer, Seasonal Variations in the Relative Demand for Money and Capital in the United States (Senate Document no. 588, 61st Congress, Second Session), chaps. 2–4.

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Closely related to the subject of the investment of postal savings-bank funds in government bonds is the provision (section 10) that any depositor in a postal savings depository may surrender his deposit, or any part thereof, in sums of $20, $40, $60, $80, $100 and multiples of $100, and $500, and receive therefor the amount surrendered in United States coupon or registered bonds of the denominations mentioned above. These bonds are to bear interest at the rate of two and one-half per cent, payable semi-annually, and to be redeemable one year from date and payable 20 years from date. They may be issued

only (first) when there are outstanding bonds of the United States subject to call, in which case the proceeds of the bonds shall be applied to the redemption at par of outstanding bonds of the United States subject to call, and (second) at times when under authority of law other than that contained in this Act the Government desires to issue bonds for the purpose of replenishing the Treasury, in which case the issue of bonds under authority of this Act shall be in lieu of the issue of a like amount of bonds issuable under authority of law other than that contained in this Act.

Aside from its relation to the subject of the retirement of United States two-per-cent bonds and to various proposals for banking reform—subjects to be referred to later—this provision has four distinct merits, which may be called respectively legal, educational, political and fiscal. (1) The legal merit is that it strengthens the constitutional position of the bank as an instrument of the federal government with which to borrow money on the credit of the United States. (2) The educational merit is that it encourages thrift by providing a safe investment for postal savings-bank depositors when their deposits reach the maximum of $500 authorized by law, and that it encourages the beginning of investments (as contrasted with bank deposits) by offering to the poor man perfectly safe bonds in small denominations which yield an interest rate larger by one-half of one per cent than the rate paid on postal savings-bank deposits. (3) The political advantage is that it tends to place the public debt more largely in the hands of the poorer classes, as is the case in France, and to tie their interests more closely to

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those of the government. (4) The fiscal advantages are: that it will in time presumably give the government the power to float bonds (not carrying the privilege of being used as security for national bank-note circulation) at a substantially lower rate of interest than would otherwise be possible; and that it opens a possible way for the conversion of the $63,945,460 three-per-cent bonds of 1908–18 now payable at the pleasure of the government.

The investment features of the Postal Savings Bank Act can not be fully understood except in connection with the general subject of banking reform in the United States. While Congress was passing the Postal Savings Bank Bill, the National Monetary Commission was at work on the broader subject of banking reform. One of the greatest defects of our national banking system is generally admitted to be the bond-secured circulation. By reason of the privilege of being used as security for bank-note circulation, these $731,000,000 two-per-cent bonds command a price much higher than they could otherwise command in the market. The banks have purchased them in good faith, and if the circulation privilege is to be taken away, the government is clearly under obligation to protect the banks from loss. The investment of postal savings-bank funds, it was argued, would provide a method for the purchase of these bonds at par when the circulation privilege was taken away from them,[1] and they might then be converted by the government into bonds bearing a proper rate of interest from the fiscal point of view.

The opposition to authorizing the investment of postal savings-bank funds in two-per-cent bonds was very strong, particularly in the Senate; and to save the bill from defeat an amendment proposed by Senator Borah was adopted shortly before the bill came to its first vote in the Senate. It provided "that no part of said funds shall, in any event, be invested in bonds or other securities bearing interest at less than two and one-fourth per cent per annum." This amendment, however,

[1] *Cf.* Speech of President Taft on the subject of the Postal Savings Bank, Milwaukee, September 17, 1909, *Congressional Record*, February 17, 1910, pp. 2048–2050.

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did not survive the overhauling which the bill received in the House; and when the bill was returned to the Senate it contained no limitation whatever as to the character of United States securities in which postal savings-bank funds might be invested. Despite considerable opposition in the Senate on this ground,[1] the bill as passed by the House became law, without any such limitation. Should it be decided, therefore, to retire the bond-secured national-bank-note circulation, in order to make way either for an exclusive issue of bank notes by a banker's bank, like the proposed Reserve Association of America, or for the issue of an asset currency by existing national banks, there is nothing in the law to prevent the administration from investing postal savings-bank funds in the existing two-per-cent bonds. Whether the government should convert these bonds when purchased by the trustees into an issue of bonds yielding a higher rate of interest, or should make good out of its revenues the deficit which would result in the postal savings-bank account by reason of the investment of its funds in bonds yielding so low a rate of interest, would be largely an administrative question and would make little difference to the United States Treasury.

Expense of administration

The debates in Congress show clearly that it was the intention of the advocates of the postal savings-bank system to make it self-supporting. Whether that intention will be realized or not is a matter for the future to decide, and speculation on the question is at present hardly worth while. It may be helpful, however, briefly to summarize the present situation. Deducting the five-per-cent cash reserve which the law requires to be kept in the Treasury at Washington, 95 per cent of the deposits may be expected to yield interest to the government. Assuming that the trustees will keep the 65 per cent on deposit in banks at two and one-half per cent interest, the rate which they have recently decided upon (the minimum permitted by law being two and one-fourth per cent), and that they will in-

[1] *Cf. Congressional Record*, June 21, 1910, pp. 8945 *et seq.*

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vest the maximum amount allowed under normal conditions, *viz.* 30 per cent, in United States bonds at an interest yield of two and one-half per cent, we arrive at a yield of 2.375 per cent on each one hundred dollars of deposits received by the postal savings banks.[1] Two per cent interest is paid to depositors, so that there is left about three-eights of one per cent to cover all administrative expenses. This is a rather low percentage, as compared with the cost of administering postal savings banks in other countries. The figures compiled by the National Monetary Commission[2] on the subject show wide variations of expense in different countries, and also in the same country from year to year. In the United Kingdom, for example, the highest percentage in any year was 1.47 (1878), and the lowest was 0.34 (1905); and in France the range was from 0.76 per cent (1882) to 0.37 per cent (1905). For 1908 the highest percentage reported was 1.35 in Austria and the lowest was 0.23 in Italy. The value of these statistics is lessened by the fact that we do not know how they were computed. They are more likely to be understatements than overstatements; for many items, such as the expense for franked mail and for the services of higher officials, are rarely, if ever, included. Postmaster-General Hitchcock[3] believes that the system, if "wisely planned and administered, will prove to be a success from a financial standpoint." In arriving at this opinion he lays particular stress upon the fact that much of the necessary administrative machinery, including clerical help, is already at hand in the 51,824 money-order post-offices of the country. The government will certainly do well if it succeeds in keeping the actual administrative expenses down to anything like three-eighths of one per cent.

The immediate occasion, it will be recalled, of the strong agitation that led to the establishment of a postal savings-bank

[1] If we assume the interest yield on United States bonds to be three per cent, then the postal savings-bank funds would give the government 2.525 per cent instead of 2.375 per cent.

[2] Notes on the Postal Savings-Bank Systems of the Leading Countries, p. 58.

[3] Letter to Senator Thomas H. Carter, dated January 3, 1910; *Congressional Record*, February 4, 1910, p. 1519.

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system was the panic of 1907. In the discussions concerning the bill it was therefore natural that much should be said of the position and influence of postal savings banks in times of panic. With the normal division of the funds received on deposit into three parts—five per cent held in cash at Washington, 30 per cent invested in United States government securities and 65 per cent kept on deposit in selected banks and secured by high-grade securities supported by the taxing power—there need be little fear concerning the safety or availability of the funds in times of panic. Postal savings banks have existed for years in most of the principal countries of the world and serious "runs" on them are almost unknown.[1] It is less easy to answer the question: How would the postal savings bank function with other banks in times of crisis? Upon this question the debate brought forth wide divergence of opinion. The advocates of postal savings banks took the position that they would greatly strengthen the financial situation in times of panic. At such times, they reasoned, the public would maintain confidence in government savings banks, no matter how much they should lose confidence in other banks. If they withdrew money from other banks, instead of hoarding it they would deposit it in postal savings banks, and these in turn would redeposit it in the local banks. From the depositor's point of view the result would be a loss of interest but the securing of a virtual government guaranty of his deposit; the local banks would have the same money they had before, only the government would be the depositor at say two and one-fourth per cent interest instead of the individual at a presumably higher interest rate. On the other side it was urged that the difference between the interest rate paid by the postal savings bank and that paid by the other banks would be a matter of slight consequence in times of panic, safety of deposits being the great

[1] In 1893 there were runs on the postal savings banks in France, as a result of charges that the people's money was being sunk in the building of the Panama Canal. *Economist*, vol. li, p. 127. There were also runs a few years ago on some postal savings banks in England, because a political speaker made the assertion that the whole of the postal savings-bank deposits had been lost in the South African War. *Bankers' Magazine* (London), vol. lxxxii, p. 402.

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consideration; and that the accessibility of postal savings banks would result in excessive withdrawals from other banks, many of which would otherwise not have been made, in order to take advantage of the absolute safety offered by the government banks. The money so withdrawn would not flow back quickly to the local banks, it was argued, because the proposed law required the local banks to pledge as security for the deposit of postal savings-bank funds high-grade securities supported by the taxing power. How could the banks obtain money to purchase such securities in times of panic?

It is dangerous to prophesy what will happen in times of panic; an unbiased view of the situation, however, hardly seems to justify the optimism of the proponents of the postal savings-bank system or the pessimism of its opponents. The difficulty of securing, in times of panic, satisfactory collateral to pledge for deposits of postal savings-bank funds would undoubtedly be a real one. It would be mitigated, however, by the facts: (1) that the range of securities allowed by law is a very wide one, and that the trustees would doubtless be as liberal as would be consistent with safety in interpreting the law at such times; (2) that many banks would be owners of acceptable securities, and in many other cases such securities could probably be borrowed. Apprehension that large sums of money would suddenly be withdrawn from other banks for redeposit in postal savings banks in times of panic is in some degree lessened by the following considerations: (1) many or the most timid depositors, especially the foreign-born, will presumably keep their accounts in the government banks; (2) the great majority of depositors, as experience shows, never attempt to withdraw their savings deposits in times of panic; (3) savings banks generally reserve the right of requiring notice of 30 days or more for the withdrawal of any considerable sums; (4) no one is permitted to deposit more than $100 in any one calendar month in a postal savings bank, and no account can exceed $500 exclusive of accumulated interest. Finally, it is to be hoped that, before another panic occurs, our banking system may be so perfected that any solvent bank with good assets can count upon adequate assistance in case of a "run."

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Soon after the passage of the act the Board of Trustees decided that the $100,000 appropriated for inaugurating the system should be used to open one depository in each state and territory with the beginning of the new year. Such depositories were opened in forty-eight towns. At the end of February, these towns reported 3664 open accounts, with total deposits of $133,869. Congress made an appropriation of $500,000 at the last session, which was made immediately available to enable the postmaster-general to extend the system. Up to July, 850 postal savings depositories had been established, and it was believed by the Post Office Department that deposits would aggregate $1,000,000 by July 1. "The purpose of the officials to designate a hundred and fifty or more new postal savings offices a week, until all of the forty thousand money-order post offices of the country have been made available for savings, measures their enthusiasm over the success of the new system."[1]

The postal savings-bank system has thus been inaugurated on a small scale and with nothing like the elaborateness of plan or of function found in most countries. Wide discretionary powers, however, are given to the trustees, and they are extending and adapting the system with a wise conservatism. The success of postal savings banks in other countries, wherever fairly tried, is an earnest of their future usefulness in the United States.

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[1] National City Bank, United States Securities and Government Finance, July 1, 1911, p. 3.

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COMPULSORY OLD-AGE INSURANCE IN FRANCE

THE adoption in France, on April 5, 1910, of the law introducing a compulsory system of old-age and invalidity insurance marks the decisive triumph of the conviction that no voluntary system is capable of solving the great question of provision for old age, and the acceptance of the German view, that only through compulsion can satisfactory results be obtained. This conclusion had been very generally reached in France, at least as far as old-age and invalidity insurance was concerned, a number of years ago; but the adoption of a compulsory insurance law was delayed by differences of judgment concerning many important details and also by fear of the burden which such a system would impose upon the state budget.

Antecedent experiments

For more than half a century France had experimented with the encouragement of voluntary old-age insurance, through the "national old-age retirement fund." Notwithstanding its large operations, it had failed to fulfill the hopes entertained by the supporters of the voluntary principle. The activity of the voluntary mutual-benefit societies in the field of old-age and invalidity insurance was sufficiently large to demonstrate the need for such provision; but, notwithstanding liberal subsidies from the government treasury, comparatively few persons were protected. In 1907 less than 8,000,000 francs were paid in old-age pensions to about 90,000 pensioners.

The expectations based upon the semi-compulsory provision of funds for old-age and retirement pensions in industrial establishments were proved to be exaggerated by the special investigation of 1895, which showed that, even including those employed in the government industrial establishments, less than ten per cent of the industrial employees enjoyed the benefits of such protection.

Compulsory insurance was gradually introduced in a few

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well-defined groups of wage-workers. The earliest example of compulsory old-age insurance within an industrial group, that of the French seamen, dates far back of the period under review: the system was established in 1673 and reorganized in 1793. In this instance, however, old-age insurance closely approaches a government-service pension; for the French registered seamen have a special legal status as a marine militia, being subject, through all their years of active employment, to be called upon for service in the navy. For this reason the government contributes largely to the retirement pensions. In 1881 and 1885 this retirement system was modernized and made more liberal. It was further reorganized in 1908, so as to provide for retirement with pensions at the age of fifty, after twenty-five years of service, or earlier in case of invalidity. The pension is based upon contributions from employees (five per cent of wages), from employers (three per cent of wages), and from the state treasury. This system protects some 220,000 employees and their families, for it includes pensions to widows and orphans.

In 1894 a compulsory system of old-age and invalidity pensions was established for the miners. Within this group there had been a considerable development of insurance through the "miners' funds," covering nearly two-thirds of the miners. The law of 1894 applied the principle of compulsion for the purpose of extending the benefits of this system to the entire industrial group. It established deductions of four per cent of earnings, shared equally by employers and employees, individual accounts in the national old-age retirement fund and normal retirement at the age of fifty-five. In 1903 a subsidy of 1,000,000 francs per annum was voted for the increase of these pensions and for the payment of pensions to retired miners who had not qualified under the previous system. This system protects some 200,000 miners, with their families.

The third group in which, by a recent legal enactment, provision for old age has been made compulsory is that of the railroad employees. Here again, at various periods since 1850, pension systems had been organized by the large railroad companies. Some of these systems were contributory, others not;

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in some companies contributions were optional, in others compulsory. Gradually, however, participation was made compulsory in the seven large railroad systems and in a few minor companies. The pensions are very liberal, usually one-half of the earnings during the last six years; invalidity and widows' and orphans' pensions are combined with old-age pensions. The national old-age retirement fund is utilized exclusively by some railroads, partly by others; but several of the companies have entirely independent pension funds. The cost of these pensions, which has proved to be much greater than was expected, is met by contributions from both employees and employers; but while the contributions of the employees have not been increased very much, and amount usually to four or five per cent, the employers' contributions, equally low in the beginning, have been repeatedly increased, until at present the railroads contribute amounts equal to from ten to fifteen per cent of the employees' earnings.

Until recently the maintenance of these pension funds was entirely dependent upon the generosity of the separate railroad companies; but the act of July 21, 1909, made such funds compulsory for all the seven large railroad systems, which include more than eighty per cent of the French railway mileage and nearly ninety-five per cent of the railway employees. The law also established minimum rates; but it left the adjustment of details and the administration of the pension funds to the discretion of the railroad companies. In 1908 these arrangements insured more than 230,000 employees; and the railroad pension-fund reserves amounted to $140,000,000, besides large accumulations to the credit of the employees in the national fund, which the several companies continue to utilize, wholly or partly, in their pension systems.

These three compulsory old-age insurance systems thus cover an industrial population of nearly 700,000 employees with their families.

This solution of the problem of old-age and invalidity relief for certain groups of employees naturally drew attention to the lack of any similar provision for the rest of the wage-workers and emphasized the necessity for a comprehensive system.

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The enumerated groups represented, on the whole, the better paid working classes. For those receiving lower wages the voluntary method only was available; and, as the statistics conclusively proved, these workmen made very little use either of the mutual-aid societies or of the national fund. In its earlier period of activity, with a high rate of interest guaranteed and a high maximum limit of deposits, this fund was utilized principally by small property owners as an agency for safe and profitable investments. After the interest rate was reduced and a lower maximum limit placed upon deposits, its chief activity was that of an agent for the various miners and railroad funds and mutual-benefit societies. As far as individual voluntary old-age insurance was concerned, the use made of the national fund was quite insignificant.

Partial provision was made for these unprotected groups by the law of July 14, 1905, concerning obligatory aid to the aged, infirm and incurable in indigent circumstances. Though its official designation places this enactment among the acts of public charity, it in reality established a system of public non-contributory pensions. In this it resembles the British Old Age Pension Act of 1908, which it preceded by more than three years. It differs from the British act mainly in its broader scope, since it includes invalidity pensions as well as old-age pensions.

This act was a very important step in the movement toward a general system of provision for old age, although it was a step away from the compulsory insurance method. In a sense, indeed, it marked a victory of the compulsory principle, the compulsion in this case being exercised by the state upon the local authorities. To carry the analogy further, it may be noted that here also compulsion carried with it—or, rather, was preceded by—a subsidy; for the act of 1905 was passed after eight years' experience with an optional system introduced by the act of March 29, 1897, under which the state subsidized the pensions which departments and communes granted to the aged and the infirm. The results of this system were insignificant. Within the ten years 1897–1906 the number of beneficiaries did not exceed 27,000, and the annual appropriation of 600,000 francs for state subsidies was never exhausted.

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The principal provisions of the act of July 14, 1905,[1] as amended on December 31, 1907, are as follows. (1) It grants obligatory relief to indigent persons who are either seventy years of age or afflicted with an infirmity or an incurable disease. In the case of persons seventy or more years old, the question of disability is specifically waived in the amended law of 1907. (2) The duty of providing relief is placed upon the commune or department, according to the rules which determine "legal residence for purposes of relief." (3) This localization of the function seems to have an administrative rather than a fiscal purpose, for the substantial subsidies paid by the departments to the communes and by the state to the departments and to the communes carry back to the state treasury the greatest part of the financial burden. A certain amount of fiscal responsibility, however, is left upon the local authorities, so as to prevent extravagance in the granting of relief. The amount of subsidy varies with the financial status of the locality and the proportionate number of persons needing relief. (4) Two forms of relief are provided, institutional and outdoor, the selection resting with the local authorities. (5) In case of outdoor relief, monthly payments of from five to twenty francs are made. Payments of more than twenty francs are authorized in exceptional cases only.

This act went into effect on January 1, 1907. The rapid growth of claims under it showed that it met a real demand for old-age relief. In July, 1907, the number of persons receiving assistance under the act was 340,610; by the end of 1908 the number increased to 515,430; and on June 30, 1910, it was 569,456, of whom only 43,726 were receiving institutional care. In 1908 the total cost of these pensions was computed at 51,610,000 francs ($9,960,730), toward which the national government appropriated 20,500,000 francs, or about $4,000,000. For 1910 the total expense was estimated at 100,000,000 francs, about one-half of which was to be contributed by the national government and the remainder by the provincial and the communal governments.

[1] A translation of this act by the author may be found in the Bulletin of the United States Bureau of Labor, no. 91 (November, 1910), pages 1015–1021.

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This system of small non-contributory pensions, intended to relieve actual distress and to provide what the Germans call the *Existenzminimum*, was not accepted in France as satisfactory. The age limit was too high and the pensions were too small. The act of April 5, 1910, endeavors to solve the problem, as far as the wage-workers are concerned, by establishing a compulsory system of old-age and invalidity insurance for all groups of wage-workers not previously insured. It also carries the principle of old-age insurance into the groups of small independent farmers, artisans *etc.* by extending to them the advantages of an optional but subsidized insurance.

The growth of the sentiment favoring old-age insurance expressed itself not only in the special enactments briefly referred to above, but also, and at the same time, in a continuous parliamentary struggle for a general law. The history of this struggle is of value for the understanding of the law finally enacted, which is a complicated compromise between various tendencies and demands.

Parliamentary history of the Act of 1910

The movement for a general old-age insurance law dates back to the French Revolution. It has been computed that during the nineteenth century more than five thousand bills dealing with this problem were introduced in the French Chamber of Deputies. The agitation gained in strength after the establishment of the Third Republic. Even if the earlier movements be disregarded, the present old-age and invalidity insurance law has a history of twenty years.

The earlier proposals were widely divergent. The question of old-age insurance of wage-workers was not sufficiently differentiated from general pension schemes, compulsory life insurance or compulsory charitable old-age relief. The parliamentary labor commission, organized in 1890, had as many as ten different proposals referred to it. The most important of these was the bill introduced on June 6, 1891, by M. Constans, at that time minister of the interior.

The Bill of 1891.—Constans was not yet ready to accept fully the compulsory principle. His bill assumed that every work-

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man was to be insured against old age, but provided that any workman, upon written demand, might be exempted. The insurance was to run for thirty years, from the age of twenty-five to that of fifty-five. It was assumed that a workman under twenty-five would not be in a position to begin saving, and that a longer period than thirty years would be discouraging to most wage-earners. The bill accepted the modern principle of liberal contributions from the employer and from the state to supplement the workman's personal savings. The employer was to contribute the same amounts as the employee, and the state two-thirds of the total contributions of both employer and employee, or thirty-three per cent more than either.

In addition there were to be subsidies to workmen desiring to take out life insurance: on each policy of from 500 to 1000 francs, to be paid for in thirty premiums, the state was to pay one-third of each premium. An exceedingly interesting argument was made by Constans in favor of this provision. He argued that a married worker who bought a pension might be charged with selfishness, on the ground that he was providing for his old age at the expense of his family. The usual method of meeting this difficulty, by providing insurance under the reserved-capital as well as the alienated-capital plan,[1] he pronounced unsatisfactory, because in the earlier period of insurance, when provision for children was most necessary, the value of the reserve would be extremely small. His plan therefore combined a system of old-age insurance, under the alienated-capital plan, with a provision for subsidized life insurance.

A separate fund was to be created—a distinct recognition of the fact that the national retirement fund had not proved to be a workmen's institution. No stringent government monopoly of old-age insurance was contemplated, and, for the purpose of

[1] Two well-defined forms of old-age insurance have developed in the European practice. The reserved-capital form leaves intact the amount of contributions by the insured, to be returned to his heirs at the time of his death, so that only the accrued interest is utilized for the purpose of the old-age insurance. Under the alienated-capital plan no such return of the contributions is made. It is evident that with equal contributions a higher old-age pension may be produced under the alienated-capital plan.

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avoiding discrimination against the existing private institutions for old-age insurance, all the benefits of the system were to be extended to such institutions as were or should be "authorized."

Invalidity insurance was recognized but not elaborated. The bill provided simply that pensions might be granted prematurely in cases of permanent disability, and that a special fund should be created for this purpose.

It was also recognized that "transitory provisions" should be made in behalf of persons over twenty-five years of age. It was obvious that the avowed purpose of the bill, the promotion of social peace, could not be attained without regulating the position of the workmen who were above the normal age for beginning insurance, and who of course constituted the majority of the wage-earning class. In the case of persons of forty or fifty something more than a promise of a pension in thirty years was necessary. On this point, however, the provisions of the bill were rather limited in scope.

The Bill of 1893.—As a result of the study of the Constans bill and other bills referred to it, the labor commission on February 11, 1893, introduced in the Chamber of Deputies an entirely new measure. It did away with even the superficial suggestion of compulsion that was contained in the Constans bill, and required a specific declaration from each person who desired to carry insurance. It extended the operations of the proposed plan from wage-workers to independent tradesmen, merchants, farmers and industrial employers who were not employing more than two persons. The compulsion upon the employer to pay subsidies in the case of any employee who chose to insure himself was retained; and, in order to give the employer less opportunity to object to the wage-worker's insurance, the duty of making the payments was shifted from the employer to the employee. The effort to place upon each employer the exact burden called for by the insurance of his own employees was waived. Instead of that, the bill contained an elaborate system of assessing employers in accordance with the amount of labor hired. The subsidy from the state treasury was retained, but it was somewhat reduced, being made equal to the respective contributions of employer and employee.

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To meet the difficulty of the investment of large funds by a central institution—a difficulty emphasized by the commission—local subsidiary institutions were suggested, which should invest the funds locally.

Perhaps the most interesting modification of the plan of 1891 was contained in provisions giving the person to be insured a choice between six different plans of insurance, only one of which assured an annuity or old-age pension, while the other five were various forms of life or time or endowment insurance. This arrangement seemed to indicate failure to appreciate the special purposes of old-age insurance and an inadequate grasp of the central problem. Combinations of the various plans were also to be permitted, so that a person could purchase one form of insurance with a part of his premium and another form with another part, obtaining, if he wished, both old-age and life insurance. The voluntary principle was carried logically through the entire plan. A dissolution of Parliament prevented any discussion of this bill in the Chamber.

When the sixth legislature of the republic convened in November, 1893, the bill of 1893 was again introduced, simultaneously with many other proposals to the same general purpose. A special parliamentary commission on social insurance and providence was created, and by 1895 fifteen different bills had been referred to its consideration. These varied widely in plan and scope, some urging a strengthening of the system of voluntary old-age insurance, others leaning towards some plan of old-age relief of a charitable nature, others again inclining to the German system of compulsory insurance.

While the reports of the commission on these bills did not appear until 1896, the years 1894 and 1895 were none the less fruitful in legislation promoting old-age insurance. In 1894 the law introducing compulsory insurance of miners[1] was adopted; on December 27, 1895, an act was passed for the protection of private old-age funds in the event of bankruptcy of the employer; and a bill concerning government subsidies to certain classes of depositors in the national old-age retire-

[1] *Cf. supra*, p. 501.

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ment fund became law on December 31, 1895. This bill gave occasion for prolonged and important discussions, in both houses of Parliament, of the entire problem of old-age relief, and brought out statements from the government that this was only an entering wedge and that the need of a general law was evident.

The Bill of 1896.—The report of the commission on social insurance, submitted to the Chamber on December 19, 1896, presented a new draft, together with an exhaustive explanatory memorial. Both represented a distinct reaction from the compulsory principle, which had been adopted only two years earlier in the act regarding miners and was contained in several of the bills referred to the commission. The memorial presented a comprehensive argument in favor of the encouragement of the saving habit, which was designated as the highest moral virtue. The solution of the problem of provision for old age was sought, on the one hand, in the further cultivation of the saving habit and, on the other, in such an increase of natural productivity and of the earning powers of the masses as would enable everyone to save. The general economic development of the country was described at considerable length, to indicate that in both respects progress was observable. It was shown that a large proportion of the French population was already exercising the saving habit or had made some provision or other for old age. The memorial pointed to 2,000,000 bondholders (*rentiers*); 8,608,275 savings-bank accounts, with deposits amounting to 3,918,813,012 francs; 245,000 former government employees, receiving civil pensions amounting to 215,600,000 francs; 35,304 retired railroad employees, receiving 26,715,859 francs; 32,638,193 francs deposited with the national retirement fund within one year, and 196,228 pensioners on its rolls, receiving annually 33,151,178 francs; 1,410,326 members of mutual-benefit societies, with assets of 245,000,000 francs; and 64,115 persons drawing from private insurance companies annuities averaging about 1000 francs. These facts, in the opinion of the commission, justified its preference for a voluntary system. Its bill, however, made an approach to the compulsory system by giving employer and employee rights of

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reciprocal compulsion, *i. e.* both were to contribute equal instalments and either, by making his own contribution, could force the other to contribute. This bill also contained a subsidized life-insurance plan. The commission did not deem it necessary to organize any new institution. The voluntary insurance contemplated in its bill could be entrusted to the existing private and governmental institutions.

This bill made no progress in the Chamber. On the contrary, it was followed by a series of proposals for compulsory old-age insurance, some of which, to avoid the objection of excessive cost, were restricted to certain classes of wage-workers.

Toward the close of this legislative period (1895–1898), the attention of Parliament was directed to the problem of insurance against accidents and illness, and the matter of old-age and invalidity insurance was for the time laid aside. To obtain more information on this subject, the bureau of labor, at the suggestion of the parliamentary commission on social insurance, undertook a statistical investigation of old-age pension funds supported or subsidized by the employers in industrial establishments—funds to which frequent reference had been made in the discussions of the preceding years. The results of this investigation, as published in 1898, proved the need of a general law. In the entire industry subject to factory inspection (297,767 establishments with 2,656,074 employees) only 201 establishments and 98,656 employees, or less than four per cent, were provided with old-age insurance. Even adding the 17,240 employees of the tobacco and watch monopolies and the 165,378 miners, the proportion of employees provided for by establishment funds was less than ten per cent.

The Bill of 1900.—In view of the unsatisfactory situation revealed by this statistical investigation, many bills were introduced in the legislature which convened in the autumn of 1898. The majority of these bills could be placed in one or the other of two groups: those establishing compulsory old-age insurance and those granting non-contributory old-age pensions. All these measures were referred to a new commission on social insurance, which brought in its report, together with a new draft of a bill, on March 9, 1900. In this report the compul-

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sory principle was for the first time fully accepted. The leading features of the bill were, briefly, as follows: compulsory insurance for all wage-workers in industry, commerce and agriculture; equal contributions from employers and employees; creation of local territorial institutions; old-age pensions at the age of sixty-five; insurance on the alienated-capital plan with a small compulsory life insurance; state subsidies to increase the old-age pensions to 360 francs; anticipated pensions in case of invalidity, with additional subsidies for their payment; and transitory provisions for persons beyond the age at which contributions were normally to begin, granting such persons pensions of from 150 to 360 francs.

In view of the large number of persons to be provided for, in part, at least, by subsidies from the treasury, it was deemed advisable to limit the system in the beginning to wage-workers in industry, commerce and agriculture, leaving provision for domestic servants, artisans and other groups to subsequent legislation. The commission recognized that the age limit of sixty-five years was somewhat too high; but it was deemed wisest to begin at that age and to lower it later if conditions would permit. Following the reasonings of previous reports, the reserved-capital plan was discarded as unsatisfactory; all old-age insurance was to be written on the alienated-capital plan; and the needs of the surviving widow and children were to be protected by a compulsory life insurance of 500 francs for the widow and 500 francs for the children.

Instead of one central fund, twenty local funds were to be created. The main argument in favor of this course was the advantage of greater latitude in the investment of the funds. It was asserted that if the vast accumulations were centralized in one institution, this would inevitably tend to depress the values of French bonds. It was regarded, further, as highly desirable to preserve the existing old-age insurance funds established by mutual-benefit societies and by industrial establishments; and, under certain conditions of approval and control, participation in these funds was to exempt the wage-worker from insurance in the territorial institution. The same rule was to apply to state institutions having retirement provisions.

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The transitory provisions of the bill, making the advantages of the system immediately available to persons of more advanced age, were liberal. A pension of 150 francs was provided for those over sixty-five, and to all persons over thirty-five were to be guaranteed certain minimum pensions on reaching the age of sixty-five. The minima were graded from 155 francs to the maximum of 360 francs, according to the age of the workman at the time at which the law should go into effect.

The liberal provisions of this bill, especially the transitory provisions, called for heavy subsidies from the state. It was estimated that the charge upon the state treasury would be 53,803,000 francs in the first year; that it would slowly rise to 93,933,000 francs by the twenty-second year; that it would then rapidly decline to 63,572,000 francs in the fortieth year; and that after this date, by the discontinuance of all subsidies for normal pensions, it would be only 10,000,000 francs, for invalidity pensions. This computation was based upon the census of 1891, which indicated the probability of 7,000,000 insured persons; but the results of the census of 1896 seemed to raise the probable number of insured persons to 10,000,000 and to make the probable cost nearly fifty per cent higher than the commission had computed. The financial features of the bill called forth many objections from the government, and the commission was forced to modify its proposals in many points.

The Bill of 1901.—In the revised bill which was introduced in the Chamber on May 14, 1901, the principal changes were as follows. (1) The life-insurance feature of the original bill was eliminated. In its stead the commission reintroduced the reserved-capital form of insurance, stating that it made this change with reluctance, since this form of insurance did not offer sufficient protection to the family during the years when protection was most needed. (2) To counteract the tendency to excessive claims for invalidity pensions, a portion of the subsidy for such pensions was to be charged upon the treasuries of the provincial and the communal governments. (3) The guarantee of 360 francs for normal pensions was withdrawn. In its stead a three-per-cent rate of interest was guaranteed in computing pensions. On the assumption of the inevitable

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decline of the commercial rate of interest with the development of industry and the growth of national wealth, this was considered an important advantage to the pensionaries. Moreover, this guaranty would apply to all beneficiaries, while the guaranty of 360 francs could benefit only a portion of the insured. (4) The transitory provisions of the bill were remodeled. In particular, the pensions guaranteed under these provisions were materially decreased: instead of ranging from 150 to 360 francs, as in the original bill, they were to be from 100 to 160 francs. (5) For the twenty territorial funds was substituted a central institution under the direct jurisdiction of the ministry, with compulsory investment in national securities.

As a result of these changes the probable cost of the entire system, even on the assumption that the number of insured persons would be 10,000,000, instead of 7,000,000, was very much reduced. The total cost of the revised plan was computed at 7,000,000 francs in the second year; 90,000,000 francs from the eighteenth to twentieth years, when the maximum outlay would be required; and 45,000,000 francs in the forty-fifth year and thereafter. Moreover, of this latter amount twenty-five per cent was to be contributed by the local treasuries.

This bill, based on a compromise between the desires of the parliamentary commission and the fiscal apprehensions of the government, and enlisting the support of both, made more progress in the Chamber than any previous proposal on the subject. It was discussed almost uninterruptedly from June 4 until June 17, 1901. These debates showed that, as a result of the preceding ten years of agitation, the principle of compulsory insurance was widely accepted. But so many differences on minor questions arose that, when the discussion of the single articles began, the Chamber did not get beyond the adoption of the first article. On July 2, further discussion of the bill was postponed. The government was instructed to consult employers' and employees' associations in industry, commerce and agriculture, and the chambers of commerce, in order to ascertain their opinions and wishes for a new pension bill.

The inquiry of 1901.—The results of this general inquiry were strikingly unfavorable to the project. The employers

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found the bill extravagant, while labor organizations objected to it as not sufficiently liberal. Only eleven per cent of the opinions rendered were entirely favorable; the favorable opinions being one out of six among the labor organizations and one out of twenty among the chambers of commerce. Nearly nine-tenths of the associations rejected the principle of compulsion, as well as the plan of a separate state institution. Both employers' and employees' organizations rejected the principle of equal contribution, although for diametrically opposite reasons. The employers considered this burden an unjust charge for the benefit of the employees, while among the workmen the sentiment was strongly against any contributory scheme. The proposed rates of contribution were considered too high by practically all the associations, except those representing agriculture. (The rate for the agricultural laborers was, in fact, low.) The age proposed for the liquidation of pensions, sixty-five years, was rejected as too high by the vast majority of the labor organizations. The only proposal approved by a large majority of all associations was that of invalidity pensions, although objections were raised against the low minimum.

The Bill of 1902. On the basis of a study of the voluminous material collected, the commission introduced on January 31, 1902, a re-drafted bill—the fourth during this legislative period—urging the Chamber to pass it without delay, so that it might be presented to the Senate before the expiration of the session.

The new bill showed many deviations from earlier drafts. (1) To meet the constantly recurring objection, that the proposed general law forced upon the workingmen a new method of saving and that it was calculated to destroy the mutual-benefit societies and private-establishment funds, the commission, without abandoning the principle that all workingmen must be insured, left the selection of the institution to the choice of the insured person. Mutual-benefit societies, establishment funds, savings banks, ordinary insurance companies and guaranty syndicates might be utilized for old-age insurance, in addition to a projected special "national workingmen's old-age retirement fund" and the existing national old-age retirement fund. (2) A limit was placed to compulsory insurance at

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the point when the insured acquired a right to a pension of 360 francs. Beyond that point the wage-earner was still required to contribute premiums, but he might withdraw the surplus insurance as soon as this amounted to fifty francs. In such cases, however, he was not to receive the benefits of the employer's contributions, which were to go into a special fund. (3) Provision was made for voluntary insurance of persons not included in the compulsory system, namely, share tenants, domestic servants, artisans, small independent farmers and merchants employing no hired help. (4) The rate of regular contributions, from employee and employer alike, was fixed at two per cent of the wages. As compared with the rates proposed in the previous bill (which were adjusted on a different basis) this rate was, on the average, lower; and lowering the rate correspondingly reduced the pensions. (5) Invalidity pensions were to be granted on somewhat easier conditions; but here again the pension minimum was correspondingly lowered.

This bill, which marked a further recession from the liberal plan originally elaborated by the parliamentary commission, did not command the general approval of the deputies. The seventh legislature of the republic came to an end in the spring of 1902, without further discussion of this measure.

The Bill of 1904.—With the assembling of the eighth legislature, in June, 1902, the problem of old-age insurance again commanded attention. To a new commission on social insurance were referred no less than twelve bills, including, of course, that worked out by the preceding commission. Again a careful study was made of the various projects, and a new bill was presented to the Chamber on November 22, 1904. Of the twelve bills referred to the commission, only two were based upon the voluntary principle; of the remainder, a majority demanded non-contributory old-age pensions. But the commission did not accept this latter point of view; it adhered to the system of contributions from employees, employers and the state. Another principle preserved was that of the capitalization and investment of the funds. Many other features of the earlier bills were retained. Thus, a central national institution was to be organized, but it was not to have

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any monopoly of provision for old age. The principle of choice of the medium of insurance was retained. On the other hand, in view of the general protest of the labor organizations against the age of sixty-five as too high for the normal liquidation of pensions, the age of sixty was substituted. Most of the other changes represented further efforts to reduce the probable cost of the system. Thus, the bill proposed to cover as before the wage-workers in industry, commerce and agriculture, but special provisions were introduced concerning agricultural laborers. The principle of equal contributions from employers and employees was still applied equally to industry, commerce and agriculture, but as regarded the amount of contributions two different systems were proposed: for commerce and industry, two per cent of the employee's wages and an equal amount from the employer; for the agricultural workers, a much lower rate—a flat contribution of five centimes for each work day, to be equally divided between the employer and employee. For each pension in commerce or industry, a subsidy of 120 francs was proposed; for each agricultural pension, a subsidy of 100 francs. Minimum pension levels were fixed at 360 francs for commercial and industrial employees, at 240 francs for agricultural laborers. The commission admitted that these minima were too small, but claimed that financial considerations made larger pensions impossible. In the matter of invalidity pensions, the provisions of the preceding bills were reproduced. The right to a pension in case of established invalidity accrued after two years of insurance. The invalidity pension was to be subsidized up to a maximum of 200 francs; but the subsidy was not to exceed three times the amount of the acquired pension nor ten francs for each year after the first two years of insurance nor 100 francs. In the case of agricultural laborers it was not to exceed 75 francs. For all invalidity pensions a minimum of 50 francs was established.

Provision for life-insurance reappeared in this bill. The commission repeatedly expressed itself in favor of a small life insurance as against the reserved-capital form of insurance. The bill permitted both the reserved-capital and the alienated-capital form, as far as the contributions of the wage-earners were

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concerned, but it provided that the employers' contributions should be deposited on the latter system. Under such conditions, the amount of capital reserved in the case of early death must be inconsiderable. Therefore a death benefit was provided, in the form of six monthly payments of 50 francs each to the surviving widow and orphans of the deceased.

Perhaps the greatest reduction for purposes of economy was effected in the transitory provisions for persons over thirty years of age. Thus, while sixty was established as the normal pension age, only persons aged sixty-five were to be pensioned immediately, and persons under sixty-five only as they reached that age. Thus the number of persons to be immediately pensioned was materially reduced, and their gradual increase would be offset by the high mortality among persons over sixty-five.

This bill achieved greater success in the French Parliament than any of its predecessors: it obtained the approval of the lower house, although it failed to pass the Senate. From July 6, 1905, when it was reached on the calendar, until February 24, 1906, when it was passed, it was the subject of prolonged and careful discussion in the Chamber of Deputies.

The principal criticisms of the bill were as follows. (1) It did not sufficiently take into consideration the development of voluntary old-age insurance through mutual-benefit societies, and it tended to destroy these useful institutions of self-help. (2) It would impose an excessive burden upon the budget of the workman, who had no surplus for additional saving after the claims of the labor organizations and of the mutual-benefit societies had been satisfied. (3) It was not in accord with the law regarding old-age relief[1] which had been recently enacted. (4) It imposed upon French industry a burden which would seriously impair the ability of France to compete with other countries. (5) The investment of the very large accumulations which the bill necessitated would derange the public finances.

These attacks were successfully met by the leading members of the commission on social insurance. They pointed out that in providing a comprehensive national system of old-age insur-

[1] *Cf. supra*, pp. 503, 504.

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ance, the law, far from injuring the mutual-benefit societies, would, on the contrary, stimulate their development by enabling them to extend their activity in the matter of insurance against sickness. The objection based upon the insufficiency to the workman's budget was partly met by an amendment, exempting from any contributions all laborers who earned less than one and one-half francs per day. As to the burden which would be imposed upon the national industry, it was pointed out that, of the two countries which are the main competitors of France in the international market, one had already provided a national system of old-age insurance and the other was on the eve of creating a system of old-age pensions. Finally, as to the difficulty of finding investments, it was argued that a good share of the accumulations could be advantageously employed in the development of the national resources and industries.

In the main, the bill passed by the Chamber was identical with that introduced by the commission; but in the prolonged discussion of the separate paragraphs many changes were made in details. Nearly all the exceptional provisions regarding agricultural laborers, which constituted a characteristic feature of the bill, were eliminated. To a considerable extent, the exemption of small wage-earners from any contribution rendered these provisions unnecessary. A material increase was made in the subsidies to be given under the transitory provisions. In this respect the bill as amended by the Chamber substantially reproduced the provisions contained in one of the earlier bills. On the whole, the provisions of the amended bill were much more liberal than those formulated by the commission. A new estimate of the probable cost, published by the commission a few days before the adoption of the bill, indicated that the system, as modified by the Chamber, would cost, at the outset, 247,900,000 francs per annum.

In the Senate the bill was referred to a special commission, which again undertook an exhaustive study of the whole problem by means of a new inquiry.

The inquiry of 1906.—As in 1901, a schedule containing numerous questions, intended to cover every side of the problem, was sent to a large number of associations, representing

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various interests. Of nearly 30,000 associations thus circularized, 9582 sent replies. These again disclosed considerable dissatisfaction, but on the whole, as compared with the answers to the earlier inquiry, they showed a much more favorable attitude towards the bill. More than one-third of the organizations, as against thirteen per cent in 1901, were favorable to compulsory deductions from wages, and a similar proportion approved of the contributions of employers. It is significant that these contributions were approved by sixty-five per cent of the employees' organizations and eighteen per cent of the employers' organizations. Thirty-four per cent of the replies were favorable to equal contributions from employers and employees; seventy-four per cent preferred contributions proportionate to earnings rather than fixed daily rates. Of greatest significance, perhaps, were the answers to the last question asked. In this question the associations were requested to express their opinions on the plan as a whole and to state whether they would prefer to the compulsory system advocated by the government a system based upon voluntary action and mutuality, joined with state encouragement and subsidy—a system in which the contributions of employees and employers would be optional and those of the state compulsory. Seventy-nine per cent of the employers' associations and twenty-two per cent of the employees' associations expressed their preference for an optional system.

The Senate commission which instituted this inquiry announced in February, 1908, that it could not accept the bill passed by the Chamber of Deputies. Its decision was based chiefly upon the great cost of the plan. The Chamber called upon the government to obtain from the Senate a favorable vote. On April 2, 1909, after protracted negotiations between the government and the Senate commission, in which many propositions and counterpropositions were made, the commission reported a bill to the Senate.

The Bill of 1909.—Although this bill contained a few of the features of the Chamber's bill, it was practically a new measure, greatly differing from any of those described in the preceding pages. Old-age provision was split into two parts: the annuity (*retraite*) which each person was to secure by his own contri-

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butions and which would represent his savings, and the subsidy (*allocation*), which was to be contributed in the main by the employer.

The subsidy (*allocation*) was to be uniform for all wage-workers. It was to amount to 120 francs per annum,[1] to be paid after the age of sixty-five. It was to be paid by the state from the proceeds of a special assessment upon employers, the state treasury meeting the excess of the amount to be paid over the amount collected. In the first year after the law should become operative, this assessment upon the employers was to be only ninety centimes for each employee, but it was to increase at a uniform rate until, in the tenth year and thereafter, it should be nine francs for each employee. This substitution of an assessment plan for the capitalization plan of earlier measures was based upon the desire to avoid unnecessary accumulation of funds and to subject the industry of France to no greater burden than the initial cost of the plan would require.

To the annuities or pensions (*retraites*) which the employees were to earn by their contributions, the state was to make additions (*majorations*). For the contributions of the employees a flat uniform rate was proposed: three francs per annum from all persons between the ages of fifteen and eighteen, and six francs from those who had reached the age of eighteen. Additional voluntary contributions were to be encouraged, but only the above payments were to be compulsory. Six francs is a very small insurance premium, and even its continuous payment from the age of eighteen to that of sixty-five would produce an annuity of only 108 francs. The state addition (*majoration*) was to be equal to one-third of the employee's contribution. Its purpose was to stimulate voluntary saving.

Most of the provisions peculiar to this Senate commission bill were subsequently eliminated. The distinction between *allocation* and *majoration*, the proposed relation between the employers and the state in the matter of providing subsidies and the substitution of the partial assessment plan for the capi-

[1] This is the amount usually granted in rural communities as a benefit under the law of July 14, 1905. It was in fact the purpose of the Senate commission to bring the new system into closer correspondence with that of 1905.

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talization plan all disappeared; so that in its final form the Senate bill reverted in many of its features to the bill which was passed by the Chamber in 1906. But the desire to reduce the cost of old-age pensions to the employers was very strong in the Senate, and the result was a general scaling down of the liberal provisions of the bill of 1906. Perhaps the most important change was the increase of the normal age of liquidation from sixty to sixty-five. Thus modified, the bill was passed by the Senate on March 22, 1910, by an almost unanimous vote (280 to 3); and on March 31, 1910, it was approved by the Chamber by an equally overwhelming majority (560 to 4). It was officially promulgated by the president April 5, 1910.

Analysis of the law of 1910[1]

The main features of the law may be summarized as follows:

(1) It provides compulsory insurance for wage-workers and salaried employees and optional insurance for independent workers. It extends over nearly the entire field of employment, but several important classes of workers are not included. Those whose earnings exceed 3000 francs are exempted from the compulsory system, and only those whose earnings are between 3000 and 5000 francs may participate in the optional system. Besides, several large groups of employees already provided for are excluded from the application of the law, *viz.* miners; registered seamen; employees of the large railroad systems, for whom provision at least equal to that of the law has been made; and employees of the state, the departments and the communes who benefit by special pension legislation. The optional system is available to tenants of agricultural lands (including both share tenants and cash tenants), independent farmers, artisans, small employers of labor, wives and widows of persons otherwise insured and employees earning between 3000 and 5000 francs. An official estimate places the number

[1] A complete translation of the text of this act may be found in the Bulletin of the United States Bureau of Labor, no. 91 (November, 1910), pages 1004–1015. A very detailed report may be found in the Twenty-fourth Report of the United States Commissioner of Labor, vol. i, pp. 933–945. The analysis here given is therefore brief.

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of persons subject to compulsory insurance at 10,500,000, while optional insurance will be available to 6,000,000 others.

(2) The law requires definite contributions from the insured and exacts equal contributions from the employers of persons insured under the compulsory system. Under the compulsory system, adult males must pay nine francs, adult females six francs, and minors four and one-half francs per annum, or three centimes, two centimes, and one and one-half centimes per diem respectively; and in each case the employer contributes an equal amount. In voluntary insurance, a certain range of payments is allowed. Cash tenants, independent farmers, artisans and small employers must pay not less than five and may not pay more than 18 francs per annum. Share tenants must pay not less than six francs per annum, but in their case the proprietor is treated as an employer and must contribute an equal amount, up to a maximum of nine francs.

(3) The law provides, in cases of compulsory insurance, a state subsidy of not more than 60 francs, beginning with the liquidation of the pension and, in cases of voluntary insurance, a varying subsidy up to the same limit. The old-age pensions mature when the insured reaches the age of sixty-five—five years earlier than in Germany but five years later than was proposed in the bill adopted by the Chamber of Deputies. At that age, if at least thirty annual payments have been made, the full state subsidy of 60 francs is granted; but if the number of payments is less than thirty but over fifteen, a smaller subsidy is granted, computed at the rate of one and one-half francs for each annual payment. In the cases of optional insurance, the law establishes a very different system of computing the state subsidy, which takes into consideration the greater latitude of voluntary insurance. An annual subsidy equaling one-third of the payments is granted by the state during the accumulation of the pension and paid in the form of alienated capital; but the same limit of 60 francs is provided, and after the pensions assured by the state subsidies reach that amount no further subsidies are paid by the state.

(4) In both forms of insurance, there are special transitory provisions for the benefit of persons who, at the time the law

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became operative, belonged to the older age groups. In compulsory insurance, the special provisions for persons between thirty-five and forty-five years of age consist in reducing the number of payments necessary to entitle the insured persons to the maximum subsidy of 60 francs. For persons between forty-five and sixty-five these special provisions consist in increased subsidies, varying from 62 francs for persons forty-five years old to 100 francs for persons sixty-four years old. The same transitory provisions are extended to share tenants, and to cash tenants whose rent does not exceed 600 francs, who were forty years old when the law went into effect. Independent farmers, artisans, and small employers who had passed the age of forty also receive, at the time of the liquidation of the pension, a supplementary state subsidy, computed according to a very complicated rule. This special subsidy is intended to encourage voluntary insurance on the part of these older persons.

(5) Individual accounts are kept and pensions are computed on the basis of accumulations. The system may be illustrated by the following tables, taken from the official *Bulletin de l'Office du Travail*. These computations assume a three-per-cent rate of interest and are based on the mortality tables of the national retirement fund.

Table I shows the probable pensions of male and female employees under compulsory insurance, and the amount of state subsidy included in the pension, separately for the transition period (*i. e.* for employees over forty years of age at the time the law went into effect) and for the normal period. As eventually all employees will begin their old-age insurance at about fifteen, the pensions will be about $75 for males and less than $60 for females. But these pensions will not appear until fifty years from now.

In Table II similar computations are made for the voluntary form of insurance. As under this form of insurance a certain range of contributions is permitted, separate computations are made, in the case of farmers and other independent producers, including cash tenants, both for the minimum annual contribution of nine francs and the maximum annual contribution of 18 francs. For the share tenants the computation is

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TABLE I. COMPULSORY INSURANCE

AGE AT BEGINNING OF INSURANCE	VALUE OF PENSION				AMOUNT OF STATE SUBSIDY INCLUDED	
	MALE		FEMALE			
	FRANCS	DOLLARS	FRANCS	DOLLARS	FRANCS	DOLLARS
Transitory period						
64	102.06	19.70	101.38	19.57	100	19.30
60	103.69	20.01	99.79	19.26	92	17.76
55	109.06	21.05	100.04	19.31	82	15.83
50	118.64	22.90	103.09	19.90	72	13.90
45	132.93	25.66	109.29	21.09	62	11.97
Normal period						
40	160.59	30.99	127.05	24.52	60	11.58
35	196.49	37.92	150.99	29.14	60	11.58
30	239.78	46.28	179.85	34.71	60	11.58
25	291.87	56.33	214.58	41.41	60	11.58
20	330.07	63.70	256.47	49.50	60	11.58
15	382.15	73.75	299.02	57.71	60	11.58
12	408.19	78.78	325.05	62.73	60	11.58

made at an assumed contribution of 12 francs, which represents the minimum of six francs from the insured person and an equal amount from his landlord. This table shows that in the case of share tenants the pensions to be expected under voluntary insurance are even lower than those to be expected under compulsory insurance. In the case of farmers and other independent producers, pensions equal to those to be expected under compulsory insurance can be obtained only by beginning the insurance at or before the age of thirty and with a maximum contribution of 18 francs. For older persons the pension is much smaller, even with the maximum contribution, and very much smaller with the minimum contribution. This is the result of the absence of employers' contributions and the less favorable provisions for state subsidies.

It is clear that for many years to come all the pensions will be small, and that only after twenty-five or thirty years will they approach the modest average of 200 francs.

(6) The provisions of the law of 1905[1] are extended to per-

[1] *Cf. supra*, pp. 503, 504.

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TABLE II. VOLUNTARY INSURANCE

AGE AT BEGINNING OF INSURANCE	FARMERS, ETC.								SHARE TENANTS			
	ANNUAL CONTRIBUTION OF 9 FRANCS				ANNUAL CONTRIBUTION OF 18 FRANCS				ANNUAL CONTRIBUTION OF 12 FRANCS			
	VALUE OF PENSION		STATE SUBSIDY INCLUDED		VALUE OF PENSION		STATE SUBSIDY INCLUDED		VALUE OF PENSION		STATE SUBSIDY INCLUDED	
	FRANCS	DOLLARS	FRANCS	DOLLARS	FRANCS	DOLLARS	FRANCS	DOLLARS	FRANCS	DOLLARS	FRANCS	DOLLARS
64 . . .	50.63	9.77	49.60	9.57	52.00	10.04	49.94	9.64	51.10	9.86	49.72	9.60
60 . . .	52.23	10.08	46.39	8.95	60.02	11.58	48.34	9.33	54.82	10.58	47.03	9.08
50 . . .	58.06	11.21	34.74	6.70	89.15	17.21	42.51	8.20	68.42	13.21	37.33	7.20
40 . . .	67.06	12.94	16.76	3.23	134.10	25.88	33.52	6.47	89.40	17.25	22.35	4.31
30 . . .	119.05	22.98	29.96	5.78	239.70	46.26	59.92	11.56	159.80	30.84	39.95	7.71
25 . . .	154.57	29.83	38.64	5.91	291.88	56.33	60.00	11.58	206.11	39.78	51.53	9.95

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sons who, in 1910, had reached or passed the age of sixty-five. The new system, which does not provide for persons over sixty-five, leaves a gap between that age and the age of seventy, at which aged persons in indigent circumstances are provided for under the law of 1905. Accordingly the system of old-age relief established by the law of 1905 is extended to all persons who in 1910 were between sixty-five and seventy, limiting this relief, however, to one-half of the normal amount granted to persons seventy years of age and over, and further limiting the maximum pension to 100 francs. The entire burden of this arrangement is assumed by the national government.

It is significant that the small pensions to be acquired under the law of 1910 are not considered sufficient to disqualify the beneficiaries from receiving public aid. Pensioners under the new law retain all their rights under the old-age relief law of 1905, though in computing the old-age relief the amount of the pension must be taken into consideration, as are all other sources of income.

(7) In the law of 1910, provision for invalidity is made by permitting anticipated liquidation of pensions and by granting special subsidies in case of total disability. Although the age of normal retirement is comparatively low, anticipation of retirement is permitted ten years earlier, *i. e.* at fifty-five. In case of retirement between fifty-five and sixty-five, the amount of the pension is correspondingly reduced, on actuarial principles, and a corresponding reduction is made in the amount of the state subsidy. Further, persons suffering from total and permanent disability, if their cases are not covered by the provisions of the accident-compensation law, are entitled to immediate liquidation of their pensions without regard to their age. They are also declared to be entitled to special invalidity subsidies. The amount of such subsidies, however, is not fixed in the law, except by establishing maximum limits, but is left to special regulations and appropriations to be made from year to year. The limits are that the state subsidy shall not exceed 60 francs per annum, nor shall it increase the pension to more than three times the amount at which it is to be liquidated on actuarial principles, nor shall it bring the pension above 360

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francs per annum. In one respect these invalidity provisions represent an advance, in that they include accidents in agricultural employments, for which as yet no provision is made in the French system of accident compensation. On the other hand, the conditions under which invalidity pensions are to be granted are very strict, for the disability must be total and permanent. Under the German law, reduction of earning capacity to not over one-third of the normal creates a claim for an invalidity pension, and it is not required that the disability be permanent.

(8) To widows and orphans the law assures death benefits varying from 150 to 300 francs. In this matter the French law goes further than other old-age pension systems. As has been shown above, in the outline of the history of the law, death benefits or a limited amount of life insurance early became an essential feature in most of the old-age insurance bills introduced into Parliament. According to the present law, the death benefits are to be paid in monthly instalments of 50 francs, the number of instalments varying from three to six according to the size of the family. They may be considered as an entering wedge for a system of widows' and orphans' insurance, though they are as yet very far below the provisions made for widows and orphans of seamen, miners, railroad employees and state employees.

(9) The insurance business is decentralized. The plan of organizing one large central government institution was abandoned in the nineties, when the opposition of mutual-benefit societies and other existing institutions became evident. The present law not only avoids injury to the mutual-benefit societies but contains many special provisions in their favor. Old-age insurance is to be carried on by the national old-age retirement fund, by the existing mutual-benefit societies or by unions of such societies, by funds of private establishments, funds of labor organizations, or by new departmental funds which may be established by special decrees, to be administered under the united supervision of employers, employees and the government. In all cases government supervision will of course be required. Thus participation of all interests concerned in the management of insurance institutions is preserved, a great deal of public control

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is exercised and the possibility is left for further development of old-age insurance through voluntary effort.

(10) The law adopts the capitalization system. This system was chosen so as not to burden the future. The danger of the injurious effect of large investments upon the money market, which was seriously discussed in the earlier history of the law, is met partly by decentralization, partly by a very large list of authorized investments. This list includes state-guaranteed securities, securities of departments and communes, colonies, protectorates and public establishments; land mortgages; and loans to institutions of providence or social hygiene and societies for the construction of cheap dwellings.

This sketch may well close with a list of the old-age insurance systems and institutions existing in France, compulsory and voluntary, contributory and non-contributory. The following are compulsory, or at least automatic: (1) civil and military pensions granted by the government; (2) pensions granted by departments and communes to their employees; (3) the pension system for registered seamen; (4) the pension system for miners; (5) the pension system for railroad employees; (6) old-age and invalidity relief under the law of July 14, 1905; (7) old-age insurance for employees and wage-earners under the law of 1910. To these are to be added the following voluntary systems: (8) old-age insurance in mutual benefit societies; (9) old-age insurance in the national retirement fund; (10) old-age pensions provided by funds of private establishments; (11) old-age insurance for farmers and independent producers under the law of 1910; (12) old-age insurance in private insurance companies. This list emphasizes in a telling way the difference between the complex system existing in France and the uniform system of Germany.

As the law did not go into effect until July 3, 1911, it is too early for any judgment of its practical working. But already certain interesting symptoms of dissatisfaction with the act have revealed themselves in various quarters. Early in the current year M. Guesdes forced a vote in the chamber upon his proposition to abolish the workingmen's contributions, but his

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proposition was rejected. Following this, on January 28, 1911, the radical labor unions, with the "Confédération Générale du Travail" in the lead, started an active resistance to the law. It will be remembered that the government investigations of 1901 and 1906 showed the existence of much dissatisfaction with the then pending proposals among the labor organizations. We have thus the curious picture of the bourgeois state seeming to force down the throats of unwilling French workingmen an old-age insurance system, with heavy contribution from the employers and subsidies from the state. But it must be remembered that the act passed both houses almost unanimously, and that the workingmen were represented in the Chamber by a strong and active delegation. One of two conclusions must be accepted. Either the French legislature did not express the wishes of its constituents, or the objections to the act on the part of the French workingmen are less general than they seem. As a matter of fact, earnest efforts are being made by the moderate labor leaders to defend the law and tosave it.

It is not difficult, however, to understand why the law has given rise to heated discussion. Many elements have united to assail it: the employer who chafes under the new financial burden; the parsimonious workingman who objects to the small deduction from his wages because he believes that he could make a more profitable investment in some other way; the careless workman who would rather forego the employer's contribution and the state's subsidy than sacrifice his own few centimes; and the radical who objects to it as a bribe from the capitalistic state to the working class. Moreover, the pensions are very small, even from the French point of view, the invalidity provisions are scant, and the age of maturity is high. What the extreme wing of French organized labor fails to notice, however, is that the law represents a signal victory in principle, that it was carried through in the face of a strong opposition of the employers, which it took twenty years to overcome, and that it may be amended in the future. There is no doubt that it marks an important advance in French social legislation.

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REVIEWS

La Sintesi Economica. By ACHILLE LORIA. Turin, Fratelli Bocca, 1909.—viii, 465 pp.

Economic science, like most other branches of thought, originated in a group of fragmentary analyses based upon static assumptions. In the early history of the science, the results of these studies were brought together in the synthesis known as the classical economics—a system endowed by its exponents with apparent universality, through the simple process of projecting it into the past and into the future. The task of the scientific economist of the last generation has been to break down this false universality and to establish the principle of the relativity of economic laws. In the campaign against classical universalism no man fought more valiantly than Loria. The reviewer knows of no more effective argument for the restriction of orthodox economics to the explanation of nineteenth-century capitalism than is contained in Loria's *Analisi*. It is therefore occasion for surprise to find that Loria has written a book entitled *The Economic Synthesis*, which he frankly describes as an attempt to set forth universal laws of economics, good for all times and places. It is his purpose "to write, if only the first lines, of the supreme drama which has for its subject mankind; for its stage, the world; for its time, eternity" (page 7).

There is one phenomenon common to all economic periods, except the very primitive, namely, the association of labor in production. Isolated labor can produce its subsistence; in only negligible instances can it produce more. Accordingly, the existence of a surplus is due to the fact of association. Here, then, we have at any rate something that is universal: association and its product, the surplus (*reddito*).

Practically universal, also, is the fact of coercion; and what distinguishes one economic society from another is, primarily, the form of coercion employed and, secondarily, the distribution of income resulting from it. Coercion may be applied to the individual by a group, to all the members of which it applies equally. The result is the communistic, the corporate (guild) and the coöperative societies. The surplus resulting from such forms of coercive association is distributed among the laborers themselves. It may be termed undifferentiated surplus (*il reddito indistinto*). Again, coercion may be applied to the

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laborer by a non-laborer who holds a position of dominance over him. Here we have the series: slavery, serfdom, wage-earning. In this series, the surplus is retained by the dominant class and is thus sharply differentiated from subsistence, the reward of the laborer. Then we have what Loria calls differentiated surplus (*il reddito distinto*). He recognizes an intermediate form (*il reddito misto*) in which the laborer participates in the surplus, or in which the superior—master, lord or capitalist—participates in the labor of production.

At any given period, one form of association and a corresponding form of surplus are predominant. This does not preclude the coexistence of other forms, but these hold usually a very subordinate place and are not even thought of in their proper terms. In the present capitalistic régime we are prone to discuss the remnants of the guild economy, of slavery and of serfdom, in capitalistic terms. So in the middle ages the germinating capitalism had to be thought of in terms properly applicable only to the guild economy.

It is to the factor of coercion that we must look for the explanation of the rise and decay of economic systems. For one reason or another, the coercive force which gives origin to an economic system and carries it to a position of predominance falls victim to itself in the end. Association breaks down, production fails and the surplus disappears. Thus the field is cleared for another system. Slavery disappeared because it became unprofitable; so also did serfdom; capitalism, too, must be destroyed, not through the assaults of opposing forms of association, but through its own inherent defects. Parasitism appears to sum up the causes of decay of a surplus system. Under present conditions, this parasitism is embodied in unproductive capital.

It is to be noted that in its successive phases coercion assumes an ever milder form. The guild was less tyrannical than the village community; the coöperative society is hardly coercive at all. Capitalism is less brutal than serfdom; the latter, far more humane than slavery. Viewed in the large, then, the progress of history appears to be, not in the direction of a collectivistic state, with coercion universally applied, but in the direction of a state in which association will be entirely freed from coercion, and in which, as a consequence, the surplus resulting from association will be universally enjoyed.

In the limits of a review it is impossible to indicate the arguments by which the author supports the various theses indicated in the foregoing analysis. These arguments seem to the reviewer extremely ingenious and wholly unconvincing. In many minor points Loria is demonstrably in the wrong. But the chief difficulty with this work, as

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with the earlier works of the same author, is that it is too original to be intelligible. Nobody understands Loria. Some day, perhaps, an economist will arise to interpret him to us; and then, I suspect, we shall find a great deal in him, especially in this work, which he dedicates as his "last thoughts upon the economic enigmas."

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The Nation as a Business Firm. By W. H. MALLOCK. London, A. and C. Black, 1910.—xi, 268 pp.

It was once said of an economist, who frequently held lucrative positions in the government service, that the politicians knew him to be a child in politics but believed him to be a great economist, while the economists, aware of his narrow limitations within their own field, credited him with mastery in the field of politics. I have often wondered whether Mallock's vogue is not explicable in the same way. While economists have been regarding him as a litterateur, is it not possible that others have been taking him seriously as an economist? Or is the explanation more simple, and is his popularity due to the fact that he stands so nearly alone in his willingness to oppose socialism and "stand pat" in a frankly partisan spirit?

Mr. Mallock's latest polemic lacks the light touch and the occasional play of wit that marked his earlier work. Unfortunately, he has not replaced these qualities by any evidence of increased care for accurate thought or exact statement.

His main thesis is that the poor are getting richer. More specifically and definitely, he maintains that since the beginning of the nineteenth century the income of the laboring classes has been increasing so rapidly that, at the end of every second or third generation, "the poor" have had as much income per head as would have resulted from an equal distribution of the entire social income at the beginning of the period. This roseate vision of social progress has hitherto been obscured or occluded by the fact that "from this diffusion of wealth a certain minority remain persistently and conspicuously excluded." This, however, is their own fault, since

> the poverty and wretchedness exhibited by a chronically non-progressive residuum are not, except incidentally and to a comparatively small degree, the result of conditions distinctive of the social system generally, but are, on the contrary, in medical language, idiopathic, which means that they are not symptomatic of any other disease, but are primarily due to the character of those who suffer from them themselves.

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Detailed criticism of Mr. Mallock's method would pass the limits proper to a review. It may be said, in general, that he places quite undeserved reliance upon Mallock and Mulhall as statistical authorities, and that in many cases the conclusion to be reached exercises an improper influence in controlling the selection and grouping of the figures used. The appearance of serious statistical study is carefully secured by the use of frequent and elaborate tables and diagrams; and it is to be feared that some readers may thereby be led into a false confidence in the author's method and results.

In view of Mr. Mallock's well-established attitude of partisanship, it is not surprising that by his methods he is able to reach a number of conclusions apparently quite at variance with the results of practically all first-hand studies and investigations regarding poverty and the distribution of wealth and income in England. The contrast is especially noticeable between the book under review and such serious and careful studies as those of Booth and Rowntree.

It should be noted in conclusion that Mr. Mallock's book has already been sharply criticized by Bowley and other English statisticians.

GEORGE R[illegible]CKER.

DARTMOUTH COLLEGE.

Twentieth Century Socialism. By EDMOND KELLY. With introductory notes by F. H. GIDDINGS and RUFUS W. WEEKS. New York, Longmans, Green and Company, 1910.—xix, 446 pp.

A good many books have been written in favor of socialism only to be forgotten. Few have attempted to do more than to reëxpound the principles of Marx; and most people have as little taste for warmed-over doctrines as they have for warmed-over meals. But the book under review is not of this character. There is much about it that is distinctive; and it constitutes perhaps the most comprehensive argument in favor of socialism that we have in English.

It is indeed hardly conceivable that any one should write a book on socialism without leaning heavily on Marx, but Mr. Kelly's socialism is not of the pure Marxian type. It makes the familiar assumption that profits and interest are unjustifiable deductions from wages, but it takes a much more tolerant attitude toward competition and toward private property than does the strict Marxian socialism. Indeed, some socialists and some caviling individualists might characterize it as a compromise with, if not a surrender to, "capitalism." This, however, would misrepresent the book. Without saying much about "class struggle" or "increasing misery" or final revolution, Mr. Kelly never-

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theless makes a strong argument for "twentieth century socialism" from the points of view of natural science and of economics as well as from that of ethics. He also makes a noteworthy attempt to meet the demand for a practicable plan for realizing socialism.

As Professor Giddings explains in his sympathetic introduction, the book represents Mr. Kelly's dying effort. His last days were spent in preparing it. It is scholarly, candid and tolerant. There is nothing in it of bitterness or of hatred. It is the ultimate conviction of a generous and honest mind trained to consider a subject from every conceivable point of view. It is a book that is well worth the consideration of all thoughtful persons.

The work is divided into three parts or books. In the first, under the heading "What Socialism Is Not," the author clears away some of the rubbish that has been heaped about socialism in popular discussion. In the second book, under the heading "What Capitalism Is," we find the usual indictment of the present system. In the chapter on "Money" in this book the importance to the community of the control by private individuals of the country's banking reserves is brought out in a way that is unusual in socialistic literature. It is not, however, exaggerated. In the third book, entitled "What Socialism Is," we find Kelly's constructive argument. There are six chapters in this book. The first two deal with the economic aspect and the economic construction of socialism; the third, fourth and fifth deal respectively with its political, scientific and ethical aspects; and the sixth attempts to drive home the fact of human solidarity.

The socialist state that Kelly describes is, in most respects, like that made familiar to us by Hillquit and Spargo. We have a state in which some industries are owned or controlled by the national government, some by the state governments and some by the local governments, the assignment depending entirely on the nature of the industry. Other industries, like that of farming and of small shop-keeping, are left in the hands of private individuals. All industry, however, is subject to public control. Vexed industrial questions will be solved by a bi-cameral industrial parliament. Owing to the evil possibilities inherent in the control by individuals of a country's gold reserve, Mr. Kelly strongly urges the substitution of "store checks" or some similar media in the exchange of all the necessaries of life. The question of corruption, according to Kelly, is purely a question of interest. We have bad government now because the majority are really interested in bad government. In the socialist commonwealth, Kelly maintains, it will be to the direct interest of every

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one to have good government, and he believes that, without changing the structure of government in any particular, socialism will secure good government.

Naturally, these chapters on the economic and political aspects of socialism arouse a host of doubts and questions; but these are for the most part thoroughly familiar to all students of socialism, and no useful purpose would be subserved by rehearsing them here.

In his chapter on "Scientific Aspects of Socialism" Kelly uses in support of socialism the principles that he worked out in his *Government and Evolution*. The evolutionary process, since the advent of man, has been largely controlled by conscious and deliberate selection rather than by the blind processes of nature. Man and not nature is now the selecting factor. Through knowledge man is able to resist nature, and through the increase of self-restraint he has cultivated those qualities which alone make social existence possible.

> He has substituted for the standard of Nature the standard of Morality, and the substitution of the standard of Morality for the standard of Nature has permitted men and women to live in the same community safe from the ferocity that drives the larger carnivora to solitude and from the massacre and mutilation which characterize such natural communities as those of the bees [page 361].

But international and intra-national conflict keep evil alive in man. The international conflict, Kelly believes, seems doomed to continue as long as racial antipathies and jealousies continue; but the intra-national conflict is simply the result of an easily modified industrial system. Competition, once indispensable to the evolution of the race, under present conditions tends "to keep alive in man the very quality—selfishness—the elimination of which is most essential to the happiness of a community" (page 362). Our author believes that, if man be wise enough, he can so modify his environment as to modify himself with it. "When, if ever, he so modifies it as to eliminate vice, then he will have realized the word of the gospel: 'Ye are gods'" (page 364).

But here arises the question: "Can human nature be changed by law?" Kelly believes that "the most superficial knowledge of human history" will suffice to demonstrate that it can. "Human nature," he says, "has already been profoundly changed by law; by the institution of marriage, by education, by property" (page 364). It can be further changed. Society as an association of organisms is controlled by government and custom, which are themselves ultimately subject to human intelligence. The more human and civilized society is, "the less it conforms to unconscious growth and the more it yields to intelli-

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gent purpose" (page 370). Kelly recognizes that the character of the individuals subject to a government and that of the government itself are functions of each other, and that this relation necessarily puts a limit at any given time upon the results which can be accomplished by legislation; but his contention is that, instead of adopting the tactics of a trainer who reduces the spirits of a refractory animal by reducing his rations, we follow exactly the opposite principle in our social and political institutions. According to him:

> These institutions whet the appetite of man to the utmost by offering the largest reward to the most crafty, the most greedy, the most dishonest and the most merciless of men; and then legislatures, for the most part elected by these very men, are expected to control their craft, greed, dishonesty and mercilessness [page 371].

Kelly believes that, by education and by the cultivation of coöperative habits, laws enacted to realize "the brotherhood of man" would have a profound effect on human nature.

Discussing, in chapter v, the "Ethical Aspect of Socialism," the author quotes Huxley in refutation of Spencerian "survival of the fittest" ethics. It can hardly be denied that Huxley's ethical doctrines are of the greatest import to socialists, and there is little doubt that the thinking and practical worlds to-day are following Huxley rather than Spencer. So important does Kelly consider Huxley's *Evolution and Ethics* that he regards Huxley as the founder of scientific and ethical socialism. It is difficult to say whether such a tribute would have aroused in Huxley more surprise or more resentment. Kelly says that there were two subjects upon which Huxley could not speak "without getting into a temper: Gladstone and Socialism" (page 384). But Kelly argues:

> The moment that Huxley recognizes that it is by the "elimination of competition" or, shall we say, the "limitation of competition," by substituting human selection for natural selection and directing selection towards an ideal that man is to progress and develop, he has recognized the scientific basis of Socialism; and when he points out that Science teaches self-restraint, human responsibility, human effort, not so much the "survival of the fittest" as fitting as many as possible to survive, he has reconciled Science and Religion [page 386].

It is fairly obvious, after a perusal of Kelly's book, that he was led to socialism rather through his study of evolution and of government than through his study of economics. And this fact makes his book all the

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more important, because it has been on this side, notwithstanding the materialistic interpretation of history, that socialist literature has been weakest. There are many who accept the ideal of socialism but dismiss it as impractical. Kelly's book is a serious effort to show that progress is impossible without it.

EUGENE E. AGGER.

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The History of Labor Legislation in Iowa. By E. H. DOWNEY. Iowa City, State Historical Society, 1910.—x, 283 pp.

The book under review is one of the Iowa Economic History Series edited by Professor Shambaugh. It is a representative number of a series which, the editor tells us, has for its leading idea "that history may be exploited in the cause of social betterment. . . . To put history to some practical use is the supreme aim of industrial and economic research." Mr. Downey's volume covers the field that from its title it would naturally be expected to cover. The leading topics are wages, convict labor, mine labor, railway labor and child labor, as far as these matters have been dealt with in the legislation of Iowa. Factory legislation is also reviewed, and an account is given of the Iowa Bureau of Labor Statistics. That the author's task has not been an easy one is evident from the fact stated in the preface, that materials are scant and unsatisfactory. Evidence of painstaking care is found in the wide range of sources and the large number of citations from statutes, journals and official reports.

Iowa affords opportunity to study the legal development of a state well advanced in agricultural activities but with only the beginnings of a complexity of industry. One regrets that the author has not found it worth while to enter more fully into the conditions out of which the legislation has developed rather than to confine his attention to "formal legislation." In one instance there is a departure from this plan. The explanation of the Employers' Liability Law is preceded by a more extended explanation of the common law on the subject.

In regard to the difficulty of securing labor legislation in Iowa the author writes:

> A majority of our legislators come from rural districts or country towns, and, however sincerely devoted to the public weal, are necessarily uninformed as to the needs and demands of wage-earners. Most members of the legislature serve for but short terms, so that they have little opportunity to familiarize themselves with legislative questions. The sessions of the General Assembly are brief, and the number of bills presented is so large

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that only those which are persistently pressed upon the attention of the members have any chance of passage. Moreover, much of the legislation demanded by working men is opposed by powerful railway and mining corporations, wealthy manufacturers and influential men of business. The natural conservatism of farmers and the fear of frightening capital and enterprise away from the state makes the legislature reluctant to adopt any measure distasteful to these interests [page 2].

The organization of the Knights of Labor in the state (1876) marks the beginning of effective agitation for labor legislation. This organization soon had a large membership and "was a power in the politics of the state. . . . During the period of their strength the Knights were very influential in securing legislation on behalf of labor." Among the results largely due to their activity the author names the establishment of the State Bureau of Labor Statistics, important mine legislation and the prohibiting of blacklisting. The Iowa branch of the American Federation of Labor now carries on this work. Through its legislative committee this organization has enforced labor's demands upon the legislature. "All of the very numerous labor laws enacted since 1893 have been secured very largely through its influence." With the federation have coöperated such important independent organizations as the railway brotherhoods and the United Mine Workers. "Thus," concludes the author, "from 1876 to the present day labor organizations have been the main factor in securing labor legislation in Iowa in the interest of wage earners." In opposition to this organization have stood the leading railways of the state, the Iowa Coal Operators' Association, the State Manufacturers' Association, the Retail Merchants' Association, and various citizens' and industrial alliances.

The opportunity to profit by the experiences of more advanced states has not always been seized. Iowa has "been able to avoid some costly mistakes and to adopt laws at the outset which had been perfected through the tedious process of evolution elsewhere"; but numerous cases remain where this opportunity was lost. "Time and again laws which had been thoroughly tested elsewhere and had proven successful have been rejected, and measures enacted in their stead which experience had shown to be inadequate" (page 5). The pages that follow, recounting the development of legislation in various matters, afford many illustrations of the peculiar tendency of American state legislatures to demonstrate their independence where dependence upon others, shown in following their example, would have produced far more satisfactory legislation.

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Women in Industry: A Study in American Economic History. By EDITH ABBOTT. New York and London, D. Appleton and Company, 1910.—xxii, 409 pp.

Women and the Trades, Pittsburgh, 1907–1908. By ELIZABETH BEARDSLEY BUTLER. The Pittsburgh Survey. Edited by PAUL UNDERWOOD KELLOGG. New York, Charities Publication Committee, 1910.—440 pp.

Wage-earning Women. By ANNIE MARION MACLEAN. New York, The Macmillan Company, 1910.—xv, 202 pp.

At no time in the history of the United States has the wage-earning woman attracted so much attention as at present. Nearly a century ago, it is true, the aged philanthropist, Mathew Carey, on discovering the compensation given to women workers in Philadelphia, New York, Boston and Baltimore, spent the remainder of his life in fruitless protest against the fact, shocking to his sense of justice, that thousands of women who were forced to work for bread, for themselves alone or for their children as well, did not receive a living wage. From time to time, too, other voices have been raised in indignation against economic and social conditions which force women to labor to the limit and even beyond the limit of physical endurance and which often give them in return shelter, clothing and food insufficient to maintain existence. Generation after generation, however, of toiling women have gone to their graves, leaving to their children a heritage of weakened constitutions, neglected education and the many debasing results of lax parental training and control, while the upper world of health, efficiency and comfort has gone on dreaming theories as to why poverty and depravity remain always with us and democracy is not a perfect success.

Notable among the many recent studies of the subject, including the nineteen volumes of the Labor Bureau Report on the Condition of Woman and Child Wage-Earners, are the three books under review, all of them the result of special investigations. The first is a history of women in industry in the United States from colonial to recent times, by Dr. Edith Abbott of Hull House, Chicago, associate director in the Chicago School of Civics and Philanthropy. It contains an introductory note by Dr. Sophonisba P. Breckinridge, assistant professor in the University of Chicago and director of the department of social investigation in the Chicago School of Civics and Philanthropy. The investigation was begun in 1905 by Dr. Breckinridge and Dr. Abbott,

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working together, and was later continued by Dr. Abbott alone, with assistance from the department of economics and sociology of the Carnegie Institution. A large part of the material was originally published in the form of articles in the *Journal of Political Economy*, the *American Journal of Sociology* and the publications of the Association of Collegiate Alumnae. The second book under review is a detailed study of the work and wages of women in all the different occupations in which they are employed in a large industrial city, and is one of the six volumes of the Pittsburgh Survey, the result of the well-known investigation carried on in 1907–1908 under the auspices of the Russell Sage Foundation. This volume contains an introductory note by John M. Glenn, director of the Russell Sage Foundation and a "Foreword" by the editor, Paul U. Kellogg, director of the Pittsburgh Survey. The third book is based upon a study made in various parts of the country by the Young Women's Christian Association and is one of the Citizen's Library of Economics, Politics and Sociology edited by Professor Richard T. Ely of the University of Wisconsin. It contains an introduction by Miss Grace H. Dodge, president of the National Board of Young Women's Christian Associations and long a sympathetic and understanding friend of the working woman.

All three books contain appendices, with statistics of women's work and wages, and also bibliographies. Among the appendices there are also, in Dr. Abbott's book, discussions of child labor before 1870 and of the meaning of census statistics on the subject of women's work; in Miss Butler's book, a description of the plan and methods of study and a résumé of the legal restrictions governing the working hours of women, not only in Pennsylvania but in other states; and in Dr. MacLean's book, the schedules used and a list of the investigators. Miss Butler's book contains also forty-three photographic illustrations.

These three books form an interesting series, the first showing the historical development of the problem, the second its present-day features in a large city and the third its wide extent in eastern and western cities and in country districts. They are, however, entirely different in style, in method and in point of view. Dr. Abbott's book makes its appeal primarily to the academic mind. It is scholarly and exact, with numerous footnotes and references to authorities. It is the result primarily of library study and is a painstaking piece of historical work. Much additional information upon the subject has been unearthed since Dr. Abbott's studies were completed, but her essential statements and conclusions stand the test of new facts and new contemporary evidence. Her treatment, moreover,

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is not, as Dr. Breckinridge says other treatments of women's work in this country have for the most part been, "either emotional and prejudiced or a presentation in official reports of elaborately compiled but unexplained statistical data." Miss Butler's book, on the other hand, appeals both to the academic mind and to the general public. To the scientific student its apparent and sometimes almost aggressive resentment of social injustice may be at times annoying, and to the general reader its systematic method, taking up industry after industry and giving in the same form the schedule facts in regard to processes, hours, overtime and wages, may seem monotonous. But both, nevertheless, must accept it as a valuable contribution to knowledge of the problem. The book is especially remarkable for its detailed descriptions of industrial processes and of the precise occupations of women—descriptions which show close, first-hand study of women at work. Dr. MacLean's book is appropriately published in the Citizen's Library, for it is distinctly addressed to the busy citizen of either sex who wishes to keep informed of the economic and social problems of the day. It is written in a popular style, and, while it makes use of the results of an investigation in different parts of the United States in which forty persons assisted, it is characterized by a personal, intimate touch that shows the author's familiarity with workrooms and working girls. Here, too, are excellent if simple descriptions of industrial processes and conditions; but there is also a picture of the women workers themselves such as one does not obtain from either of the two more pretentious volumes, and which compensates for comparative weakness from a scientific point of view, not only in style, but in material and in method of treatment.

These three books, each so different from the other, ought to reach a wide public. Certainly no one who understands the gravity of the problem of which they treat could wish to lessen in any degree by captious criticism the effect of studies so excellent, each best in its way. One of our greatest needs is for simple statements, not exaggerations, of the facts in regard to women's work, repeated and driven home to the minds as well as to the hearts of the American people. If every man and woman in the United States could be made to read one or other of these books, or better all three, and then think what it all means—this overwork and underpay of women—not only to the individual but to the nation, there might be hope of not only finding but applying effective remedies.

HELEN L. SUMNER.

WASHINGTON, D. C.

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Workingmen's Insurance in Europe. By LEE K. FRANKEL and MILES M. DAWSON, with the coöperation of LOUIS I. DUBLIN. New York, Russel Sage Foundation, 1910.—xviii, 477 pp.

The wide-spread interest now manifest in the reform of our employers' liability laws makes most timely this careful study of European systems of insurance for wage-earners against industrial accidents and other evils. The authors, acknowledged authorities in the field of social insurance, collected their material by visiting personally the principal European capitals. Though they make plans of insurance prominent in the title of their report, they have not hesitated to include systems of workmen's compensation and old-age pensions which do not involve the insurance principle. Their book thus presents a comprehensive account of all of the important methods by which European governments are trying to protect wage-earning families from the losses in income to which they are subject through industrial accidents, illness, premature death, old age and unemployment.

The first part, constituting more than one-third of the volume, treats of "Insurance Against Industrial Accidents" in a way that leaves little to be desired. The defects in our employers' liability laws and the reasons for the preference given by European countries to plans of compensating all accidents, with little or no regard to negligence, are clearly explained; the typical features of the different European systems are analyzed and discussed; the details of each of these systems are described, and, finally, the reasons, from the viewpoint of public policy, for applying obligatory insurance to the problem are convincingly set forth. Some little uncertainty is shown in summing up the results of the inquiry. Thus we are told that the German system of obligatory insurance administered by the employers' associations is the best from the point of view of accident prevention; but we are warned that the success of the German associations may, after all, be due to qualities in the German character rather than to the system itself. Again, great significance is attached to the decision of Switzerland, after a prolonged study of the operation of different systems, to adopt compulsory state insurance; but we are at once reminded that this may be only because Switzerland is a small country.

Unfortunately this hesitation in drawing confident conclusions develops, in the subsequent parts of the book, into unwillingness to formulate any conclusions at all. For reasons which do not appear, the admirable arrangement adopted in treating insurance against accidents is abandoned in the treatment of the other kinds of insurance. In-

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stead, brief introductory chapters, indicating the nature of the evil to be provided against and some of the more striking differences in the plans to be described, lead at once to a description of these plans—and with this the discussion ends. Moreover, the descriptive sections are less and less adequate as successive phases of the subject are taken up. Thus, the British system of old-age pensions is disposed of in three pages, while Belgium's plans for insuring against unemployment receive little more than a page, although the historical importance of the "Ghent system" is fully acknowledged.

Nor are these defects remedied by the concluding part treating of "Complete Insurance Systems." In place of a philosophical discussion of the merits and demerits of the different complete plans that are taking form in Europe, we have, after a rather promising beginning, a detailed and technical description of the reform proposals under discussion in Germany and Austria. The lack of appreciation for literary values which is displayed in the latter portions of the book reaches its climax at the very end. Instead of a well-rounded conclusion the last paragraph is a statistical table of quite local and transitory interest!

Notwithstanding its uneven literary quality, the disproportionate space it devotes to different phases of the problem and its inadequate interpretation of the carefully verified facts it presents, the book is a valuable contribution to an important subject. Supplemented by the comprehensive two-volume government report with the same title (Twenty-fourth Annual Report of the United States Commissioner of Labor) which has just appeared, it brings within the reach of American readers all the essential facts in regard to this highly significant phase of contemporary progress. H. R. S.

National and Local Finance. A Review of the Relations between the Central and Local Authorities in England, France, Belgium and Prussia, during the Nineteenth Century. By J. WATSON GRICE. With a preface by SIDNEY WEBB. London, P. S. King & Son, 1910.—xxiv, 404 pp.

This valuable study by Mr. Grice is the twentieth monograph in the "Studies in Economics and Political Science" published under the auspices of the London School of Economics and Political Science. Its scope and content are very accurately described in the sub-title. The book is a review, not a complete description, of the financial relations between the central and local authorities of the four important countries with which it deals; and as the text (apart from the valuable preface by Sidney Webb and the helpful appendices) runs to only 351

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pages, it is perforce sketchy in places and somewhat obscure, a defect which is intensified by the uncertainty and unnecessary abstractness of the author's style. In all essential respects, however, the monograph is a creditable, scholarly introduction to an important subject which has received almost no scientific treatment from English and American authorities.

The principal problem in the relations between central and local governments concerns the discharge of functions which, though they must be administered locally, are yet of national import, such as education, poor relief, police service and the like. How is the nation to make certain that these functions are properly exercised and, in particular, that sufficient funds are collected for their proper exercise?

On the continent, owing to the complete subordination of local to central authorities, it is not difficult to maintain the necessary central control, while the financial problem is generally solved by assigning certain revenues—usually surcharges upon national taxes—to the local governments; and the central government clinches its control by requiring the local authorities to submit their budgets for confirmation in advance of their passage. In England, on the other hand, there existed until 1835 what Sidney Webb, in one of his capitalized catchphrases, calls an "Anarchy of Local Autonomy." To secure national control of functions really national in character, the central government introduced "grants in aid," and with these subventions "successively 'bought' the rights of inspection, audit, supervision, initiative, criticism and control in respect of one local service after another, and of one kind of local governing body after another. . . ."

The development of the grant in aid is traced by Mr. Grice in a highly suggestive way. It has gone much further in England than on the continent because of the unduly simplified character of English taxation. Local surcharges on the national income tax could not be authorized, as in Prussia, because the English income tax makes such wide use of collection at the source and is national rather than local in its structure. Moreover, there has been a curious aversion in England to the introduction of new taxes which might have been assigned to the local governments, and it has been out of the question to go on piling rate upon rate on the basis of the annual value of real estate. The grant in aid therefore has been an instrument wherewith not only to purchase central supervision and control but in part to shift the burden of taxation from owners and occupiers of real estate to the consumers who pay the customs and excise duties, or less accurately, as the conflict has expressed itself in English history, to reduce the

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hereditary burdens of the landed interests at the expense of the laboring population. The grant in aid may have been a potent instrument in holding the local administration of general functions to a national minimum of efficiency and in accomplishing this without destroying the spirit of local self-government, but it has done so in a manner that was bound eventually to provoke the conflict which has dominated English politics in the last two or three campaigns. Increased taxes upon the landlord were bound to follow as a corrective to the imperfect remedy found in the grant in aid.

Continued and increasing use will be made of the national subvention, however, not only in England but elsewhere. This follows—if for no other reason—because of the growing difficulty of localizing taxes upon business and the superiority of centralized tax administration. In increasing measure, railroad, business, income and inheritance taxes will be collected by central authorities and apportioned back to the local governments on one basis or another. In view of this fact Mr. Grice's faithful study of the national subvention and how best to administer it will prove of permanent value.

T. S. ADAMS.

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The Constitutional Law of the United States. By WESTEL WOODBURY WILLOUGHBY. New York, Baker, Voorhis and Company, 1910.—Two volumes: lxxxv, xxx, 1390 pp.

Questions of constitutional law in the United States have emerged from the repository of esoteric learning into the arena of hot political debate. The opinions and judgments of the courts are discussed in the press and on the platform, in metropolitan clubs and in country groceries, quite as extensively and as earnestly as before the bench. With this increasing interest in what have commonly been regarded as technical legal questions, there has arisen a need for some work which shall aid the layman in ascertaining what the courts have decided and in forming an intelligent opinion upon the reasons adduced for their decrees.

The difficulty of presenting within reasonable compass an exposition of the whole body of our constitutional law may readily be appreciated when it is remembered that works on such special topics as extradition and taxation by special assessment have been found to require two large volumes. The plan heretofore adopted in the briefer general texts has been to tell what has been decided upon as many points as space would permit. Professor Willoughby has wisely discarded this method of

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enumeration and has chosen rather that of exposition of the fundamental principles underlying the interpretation and application of the Constitution. On all important topics we are admitted to the workshop of the courts and are shown at length the processes of reasoning by which the decisions have been reached. The work is the outgrowth of lectures delivered to students of political science and is adapted to the needs of such students and of the general reader rather than to those of the practicing lawyer; for the practitioner who resorts to a text-book requires one which treats in detail of all the questions relating to the special class of legal relations with which he is immediately concerned.

The genesis of the volumes has evidently determined the proportion of attention devoted to single topics. The discussion of questions relating to the acquisition and government of territory, the treaty-making power, citizenship and the status of the Indians occupies over one-fifth of the 1330 pages of text. Less than half that space is devoted to the topics of due process of law, the fourteenth amendment and the other prohibitions on the states, a space no greater than that accorded to the separation of powers and military and martial law. The police power is barely mentioned. In the emphasis laid upon the various topics the author seems to have been influenced less by their relative importance than by the needs of his readers. The subjects which may seem to receive inadequate attention are those to which detailed consideration is given in other works, notably in Cooley's *Constitutional Limitations*. The two works complement each other admirably and together constitute the best general treatment of the whole field of American constitutional law which we have. Professor Willoughby devotes 175 pages to questions relating to the exercise of jurisdiction by the federal courts, 140 pages to the commerce clause, and about fifty pages each to the topics of federal taxation and of the prohibitions on Congress. He discusses interstate relations, the maintenance of federal supremacy and the various powers of Congress and of the president. The proportionate treatment of those topics not covered in Cooley's work seems beyond criticism.

While the author is to be commended for aiming to present the principles underlying our constitutional law rather than a mere compendium of the results of the decisions, there will be difference of opinion as to the means employed to ascertain those principles. He has pursued the plan of selecting the leading cases on each important topic, stating the salient facts and then quoting extensively from the opinion of the court, subjecting it to careful and discriminating analysis and adding brief outlines of the other decisions applying or

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modifying the doctrines laid down in the cases selected. This plan seems to proceed upon the theory that, since the courts are the authoritative interpreters of the Constitution, the function of the scholar is limited to presenting an accurate exposition of the decisions which have been reached and of the reasoning upon which they have been based, with criticism upon the results and the methods. The general principles of the law are thus assumed to be those announced by the courts as a basis for the decision of particular cases rather than any that may be discovered by a process of wide induction from the concrete results of the judgments rendered. This method renders difficult if not impossible a treatise of the finest scholarly merit. But the sacrifice of the highest scientific attainment demanded by the specialist results in a product of greater utility for the wider audience. For the needs of the class-room and probably for those of the general reader this method of treatment is most advantageous. It renders the volumes a source-book as well as a commentary. It introduces the reader to the laboratory of the courts and provides him with the criticism of a master upon the work he has observed. The author has been painstaking in his search of the digests, discriminating in his selection of the more important decisions, accurate in determining what has been decided, acute and stimulating where he has ventured upon analysis and criticism. Looking to the Constitution to discover what questions demand solution, he has not confined himself to those which have received judicial determination, but has resorted to the practice of the legislative and executive departments where this has furnished the only guide or where either body is constituted the authoritative interpreter of some particular constitutional provision. Where both these have been wanting, he has presented deductions of his own which invariably command respect and usually compel acceptance.

In the discussion of controverted questions of constitutional and political theory, the author falls short of the careful presentation of opposing views which marks his exposition of principles of law. Upon the fundamental question of the power of the courts to declare invalid the statutes of a coördinate legislature, he holds that the judiciary is not of necessity the body vested with final power to interpret a written constitution and that the state precedents prior to 1788 were insufficient in number to warrant the assertion that the doctrine had already become established; but he asserts that under the federal Constitution the power is to be "implied from the express authority given to the federal courts to adjudicate all cases arising under the Constitution, which is declared to be the supreme law of the land." He criticizes Marshall for

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not making this the foundation of his entire argument in Marbury *v.* Madison; yet he fails to devote any consideration to the objection that the clause making the Constitution the supreme law of the land includes as well the laws of the United States made "in pursuance thereof" (not *in conformity thereto*) and was designed to secure the supremacy of federal enactments over those of the states rather than the supremacy of judicial interpretation over that of a coördinate legislature. With unquestioning orthodoxy the author has accepted the judicial revelation of the nature of the judicial function in exercising this power of review. "When the courts declare void legislative acts inconsistent with constitutional provisions, the judges are giving effect to the real will of the people as they have previously solemnly declared it." Later, in discussing the interpretative value of debates in the Constitutional Convention, it is conceded that this "real will" is not to be ascertained from the opinions of the framers, since the Constitution derives its force from the ratification . . . not from the drafting. The assumption that, in the congeries of conflicting motives which in 1867 influenced the majorities in the legislatures ratifying the fourteenth amendment, there is discoverable a "real will" that in 1910 hours of labor might be limited in mines but not in bakeshops must be at least open to question. Upon some of the fundamental problems of political importance the author has sedulously refrained from reaching by analysis his own conclusions. He has contented himself with presenting faithfully the dogmas of the courts, upon the seeming principle that they are the body vested with ultimate power not only to declare rules of law but to announce authoritatively what is the political nature of the functions which they exercise.

The book will never be put upon the index of a juristic pope. In awarding space to the competing topics, the hand is the hand of the student of government; but in discussing the decisions, the voice is the voice of the lawyer. Criticism upon the arguments and conclusions of the courts is confined to the interpretation of language and the conclusions of logic. There is no reference to the political and economic considerations which may underlie and explain the decisions, forcing the judges, in the phrase of Mr. Justice Holmes, to "a judgment or intuition more subtle than any articulate major premise" in order to reach a present-day solution of problems undreamed of by those who drafted and ratified our fundamental law. Whether this method of interpretation be sound or unsound, wise or unwise, there are in the decisions of the Supreme Court sufficient traces of it to seem worthy of notice and comment. In dealing with the work of the courts the

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author has paid greater heed to their utterances than to their acts. In his political analysis he has not delved deep below the surface. In his orthodox acceptance of revealed truth, the inquisitiveness of the scholar has yielded to what seemed a higher demand. His restraint would indicate that he shares the apprehension of Mr. Justice Harlan, as expressed in his recent dissent in the Standard Oil decision, that "there is abroad in our land a most harmful tendency to bring about the amending of constitutions and legislative enactments by means alone of judicial construction."

THOMAS REED POWELL.

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The Constitution of the United States. By DAVID K. WATSON. Chicago, Callaghan and Company, 1910.—Two volumes: xxxiii, 1959 pp.

Dr. Watson's commentary, following classic models, deals with the Constitution in the "legal order," clause by clause and phrase by phrase, from the preamble to the closing words of the fifteenth amendment. The text embraces in all 1679 pages and is supported by an appendix of illustrative documents. The method of treatment is historical and practical, designed to show the views of the Fathers as well as the law of to-day. Nearly every clause of the Constitution is accompanied by a survey of the discussions in the Convention of 1787, and, in the case of the amendments, of the pertinent debates in Congress. This material is supplemented by copious extracts from letters, papers and official documents, illustrating the various views entertained by men of affairs concerning constitutional problems from generation to generation, and embodying weighty precedents on important questions of public law. Generally speaking, Dr. Watson does not follow Story, whose severe adherence to forms and legality made him oblivious of, or indifferent to, practical operations. For example, one can learn from Dr. Watson that the speaker of the House of Representatives is chosen by a party caucus and is really a partisan leader (pages 203–207). Unfortunately, our author has not been consistent in this regard; for example, in his discussion of the Senate he would mislead the uninitiated reader into believing that all the senators are really elected by state legislatures. In most sections, however, Dr. Watson's treatise is reasonably exhaustive, and relative values have been carefully measured. All the great and familiar decisions of the Supreme Court are arrayed in their proper places, and long extracts from the cases are used in the exposition of constitutional doctrines. It might

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have been of advantage, however, if Dr. Watson had given more time to an analysis and critical comparison of the cases. The difficulty of separating dicta from law, the prolixity of our federal judges and the frequency with which general conclusions are traversed by concrete decisions make it necessary to be on one's guard against the most carefully selected quotations from judicial opinions. If it be said that the commentator, by an examination and criticism of judicial decisions, gives the reader his own conclusions instead of those of the court, it must be remembered that extracts from judicial lucubrations often do not have the value of an impartial commentary derived from a comparison of concrete orders of the court in particular cases. Without quarreling with Dr. Watson's plan, one may hope that a commentator will arise who will do for our constitutional system what Blackstone did for the laws of England.

This does not mean, however, that our author has shirked conclusions of his own, for on many controverted points he gives his own position after a survey of the documents. For example, he believes that the decision rendered in the second income-tax case established "a new rule of taxation and a new construction of the Constitution" (page 192). And, in speaking of the opinion of the court that a tax upon income from land is a direct tax, he adds:

> This branch of the decision has been subjected to much adverse criticism by the legal profession, and while the judgment of the court is recognized as the law of the land, it is doubtful if it is regarded by the bar of the country as a correct interpretation of the constitutional provision on the subject.

At the end of his chapter on "Judicial Control over Legislation," Mr. Watson holds that, although the Constitution "does not expressly confer that power upon the judiciary, it does so by implication, and the exercise of such power by the judicial department of the government meets the approval of the great body of the American people" (page 1192). In discussing the question why a definite proposal to give the judiciary this power was not brought up in the Convention by its supporters, he says: "The friends of the measure may not have desired it to pass in that way, or they may have thought that, if it did pass, it would be opposed in the state conventions and possibly cause strong opposition to the Constitution."

In handling themes that involve historical criticisms Dr. Watson is by no means always happy. For example, his appreciation of the value of the Pinckney draft of the Constitution (pages 67–75) should be compared with the illuminating analysis given by Professor Farrand (*The Records of the Federal Convention*, volume iii, pages 595–609).

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The fiction that Magna Charta recognized the existence of the jury system, like the historic ghost, will not down; for Dr. Watson gravely informs us: "It was not until the granting of Magna Charta that the jury system became apparent in the administration of the criminal law in England" (page 1141). The statement that the emancipation proclamation abolished slavery in the United States (page 913, note) is of course, inexact. The bill inflicting the death penalty upon any officer or person serving a writ in any suit brought by a person against the State of Georgia does not seem to have been passed by the Georgia legislature (as is stated on page 1538); for, as Professor Ames remarks (*State Documents on Federal Relations*, page 8), it was adopted by the lower house, and it apparently did not receive the approval of the Senate. The suit in the Chisholm case was not brought in 1793; it came before the court in the August term of 1792. Other minor criticisms of this character might be made, but such errors do not impair the essential usefulness of the author's work. His treatise will undoubtedly find a place among the valuable commentaries upon American constitutional law and practice.

C. A. B.

The Records of the Federal Convention of 1787. By MAX FARRAND. Yale University Press, 1911.—Three volumes: xxv, 606, 667, 685 pp.

Professor Farrand's work embraces the Journal of the Convention; the records kept by Madison, Yates, King, McHenry, Pierce, Paterson and Hamilton; many critical notes, including a reconstruction of the Pinckney plan; a number of valuable papers relative to the work of the Committee of Detail; and a supplementary volume of extracts from various original sources, designed to illustrate the work of the Convention. The primary materials, that is the Journal and the notes by Madison and others, are not published as separate parts, but are split up and arranged under the days of the Convention, beginning with May 25 and ending on September 17.

The editor informs us that the enterprise was undertaken with the primary purpose of gathering all available records into a single work and presenting them in trustworthy form. As his labor advanced and he discovered the faulty character of older publications, his scientific purpose took precedence over his encyclopædic plan. Indeed, the most important service which Professor Farrand has rendered in his critical work is the preparation of the texts and the corrections made in each of them on the basis of the general collation. To say that our

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fundamental notions concerning the general work of the Convention will be altered by this new publication would be an exaggeration; but innumerable corrections must be made in detail, particularly in the records of votes on various propositions.

Apart from the annotations designed to correct errors, Professor Farrand has not seen fit, except in rare instances (*e. g.* I, 580), to connect the daily discussions on particular themes by running cross-references. Since the index, as is noted below, is inadequate and unsatisfactory, the scholar using these volumes for any special subject will often find himself compelled to turn over every page. The editor was not bound to perform the more or less mechanical task of making cross-references; but with his unrivaled knowledge of the materials he could have done the work better than any one else.

In the third volume of supplementary material Professor Farrand includes extracts from private correspondence, contributions to the press, public speeches and debates in various assemblies, in which the delegates to the Convention referred to and explained the action or intention of the Convention upon particular subjects. This valuable mass of material, the editor informs us, is not designed to be exhaustive, and in the selection of extracts careful discrimination has been made between statements relative to the proceedings in the Convention and theoretical interpretations of the clauses of the Constitution. Of course, the editor is entitled to his own basis of discrimination, and the historical scholar will undoubtedly approve it. Nevertheless the student who approaches the records from the point of view of constitutional law will find it hard to see the reasons why the impression of a member of the Convention, recorded some thirty years after its adjournment (III, 439), as to the intention of the delegates in any particular matter should be more valuable than such a contemporary exposition as is found in *The Federalist*. The most valuable part of the third volume is the critical study of the Pinckney plan and the Paterson resolution.

The index is, on the whole, very disappointing. It falls into two parts. In one part the Constitution is printed, and after each clause full references are given. In some instances, as, for example, after clause iii of article 1, a hundred or more references are given to pages in the three volumes, without any attempt at distribution, *i. e.*, without any indication to what parts of this clause the particular citations refer, so that the reader who wishes to look up any single point must turn to every page indicated. The second part of the index embraces subjects and names of persons. Here the editor has included references to

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some matters which were discussed in the Convention but not treated in the final draft of the Constitution. This second part, however, is by no means exhaustive, as a casual examination shows. There is, for example, no mention of "slavery" in the index. The title "Judiciary" cites only the references in the first part of the index and another title "laws contrary to the constitution." An examination of this last title shows important omissions; for example, II, 92, 391, 439 and 440 are not cited. Something is wrong with the reference to "Cincinnati, society of"; and a significant mention of the society in the French document (III, 43) is omitted. Whoever uses the volumes must do his own research if he wants to be certain of complete results.

I am loath to close with this criticism, in view of the admirable work which Professor Farrand has done in editing the materials and publishing critical texts of the Journal and the notes on the debates. As far as he has gone, he has completely superseded all other publications.

C. A. B.

The Constitution of the Commonwealth of Australia. By W. HARRISON MOORE, Dean of the Faculty of Law in the University of Melbourne. Second Edition. Melbourne, Charles F. Maxwell (G. Partridge and Company), 1910.—xxviii, 782 pp.

The Broad Stone of Empire. Problems of Crown Colony Administration, with Records of Personal Experience. By Sir CHARLES BRUCE, G. C. M. G. London, Macmillan and Company, 1910. Two volumes: x, 549; viii, 555 pp.

Apart from the great empire of India, which writers on British colonial affairs always treat as a thing by itself, the dependencies of Great Britain are classified as "colonies with responsible government" and "crown colonies." These two classes of possessions differ not only in their political institutions but in other important respects. The colonies with responsible government are to be found for the most part in climates in which white men can live and work, and consequently they are inhabited by British races, while the crown colonies are almost without exception found in the tropics where, either by reason of the climate or of the presence of a dense non-white population, the whites are not numerous. These different conditions have determined the political institutions of the two groups. The men of the British races have insisted on governing themselves; but where there are very few of them, as in the tropical colonies, the question of government resolves itself into the question of how best to preserve the political supremacy

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of the whites and at the same time so to protect the native population that the greatest profit may permanently be secured from the management of these possessions.

By reason of the fact that for nearly all practical purposes the Commonwealth of Australia is politically independent, the consideration of its government does not involve the discussion of distinctly colonial problems. Mr. Moore's book is therefore of interest rather to the constitutional lawyer than to the student of colonial affairs. It is also of special interest to the student of American constitutional law, because Australia has adopted the federal form of government, and because its commonwealth constitution exhibits interesting resemblances to the Constitution of the United States and still more interesting differences. The federal form of government was adopted, partly because it was believed to be the only form which was suitable to the existing conditions, and partly because it was recognized that no other form of government would be accepted by the people of the several Australian colonies. In planning their federal constitution the Australians builded on the foundations laid by our American forefathers, and at the same time they avoided some of the difficulties which American development has shown to be associated with the particular form of government represented in the Constitution of the United States.

Mr. Moore's book begins with a historical introduction, which describes the founding of the Australian colonies and the federation movement which resulted in the adoption of the present commonwealth constitution. The main body of the work treats of the nature, organization and powers of the commonwealth government, and of the constitution and status of the states, as the former colonies are now called, and their relations to the Commonwealth. After this, the author takes up, one by one, the subjects with which the Commonwealth is empowered to deal, devoting particular attention to finance and trade.

In his preface Mr. Moore calls attention to Professor Dicey's dictum that federalism is legalism, and he remarks that "much of its law is hard, dry and technical." While it cannot be claimed that his is a book with which to while away a hot summer afternoon, it may still be affirmed, without qualification, that it is a book which cannot fail to interest the student of federal government and particularly of American federal government. Perhaps no book will impress upon him more forcibly than this that many of those great decisions of the United States Supreme Court, upon which we perforce lean so heavily in our interpretation of the Constitution, were in reality determined by the peculiar conditions under which the cases arose, and that some at least

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of these leading cases need not, as matters of law, have been decided exactly as they were. One can hardly fail to feel that much of the force of some of the Supreme Court's decisions has been due rather to the fact that it was a court of last instance than to the fact that it had greater insight than other courts.

While Mr. Moore's book gives us a most interesting picture of the American conception of federal government as applied to self-governing dependencies of the British Empire, Sir Charles Bruce's *Broad Stone of Empire* shows us the problems arising in crown colonies, as they present themselves to a colonial administrator of great experience. Sir Charles Bruce, as his book informs us, was, at one time or another during his long period of service, in the educational department in Ceylon and governor of the Windward Islands, British Guiana and Mauritius.

It would be difficult to find elsewhere an equally exhaustive discussion of the many problems presented by the conditions of the crown colonies of the British Empire; and it would perhaps be impossible to find a more interesting and charming book on this subject. As its title indicates, it contains "records of personal experience," which give to details that might otherwise be tedious vividness and interest. Some of these "records" seem to be inserted to show the appreciation accorded to the author's services by personages of high, in some cases of royal, rank. Although the naiveté of these particular records may provoke a smile, they add a truthful detail to the picture of British colonial administration; for the desire manifested for such appreciation and the gratitude exhibited when it comes must be powerful motives with those upon whom Great Britain relies for the conduct of her vast colonial empire.

It must not, however, be supposed that Sir Charles Bruce's book consists entirely or even mainly of personal experiences. A number of chapters, making up the major part of the two volumes, are devoted each to some one problem, such as labor, transportation, education, forestry and health. In each of these chapters the author first describes, in a most concrete way, the problem as he sees it from the point of view of the mother country and from that of the colony, and then he sets forth his opinion as to its proper solution. Perhaps the most important suggestion in the book is that a change be made in the method by which the home government exercises its control over the colonies. Sir Charles Bruce is of the opinion that too often this control is rather unintelligently exercised—actually by some poorly paid clerk in the Colonial Office—and that much good would result if the colonial secretary were assisted by a council, similar to the Indian

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Council which advises the secretary for India. Such a colonial council should be composed of former colonial officers, especially retired colonial governors.

No one who is interested in the problems of colonial government should fail to read this book.

F. J. G.

Roman Law in Mediæval Europe. By PAUL VINOGRADOFF. London and New York, Harper and Brothers, 1909.—x, 136 pp.

The revival in the eleventh century of the study of Justinian's law books and their wholesale "reception" during the following centuries in a large part of Europe, including regions which had never been subjected to the authority of the old Roman empire, form a very remarkable chapter in the history of civilization. In the English language there is so little literature of any value on this subject that Professor Vinogradoff has rendered a real service to historical and legal students by publishing the brief course of lectures on the Roman law in the middle ages which he delivered at the University of London in the spring of 1909.

His first chapter, on the "Decay of the Roman Law," covers the period from the fifth century to the eleventh. It gives more than its title indicates: it shows not only the degree to which Roman law survived, in more or less corrupt form, first as personal law and later as local usage in the Latin countries, but also the extent to which, especially through the church, some Roman institutions and rules found their way into Teutonic legal systems. The second chapter, on the "Revival of Jurisprudence," deals more fully with the study of the Roman law in the eleventh century in the Provence, in the Lombard cities and at Ravenna than with the well-known activity of the law school at Bologna in the twelfth and following centuries. In this chapter the author has made accessible to English readers the result of many minute historical studies prosecuted during the past generation. The three following chapters deal with the more or less extensive Romanization of mediæval law in France, England and Germany respectively. For England we had already, among other things, Scrutton's monograph and scattered chapters and essays of Maitland's; but even here Vinogradoff makes some new points. Each chapter is preceded by a select bibliography; and some well-chosen documents are given in an appendix.

One of the conspicuous merits of this little book is that, in spite of the fact that it compresses into 130 small pages a movement which covered western Europe and went on for eleven centuries—if indeed it

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has not been going on ever since—it is neither a series of general statements unaccompanied by evidence nor an undigested accumulation of facts. The story, thanks to insistence on its main current and disregard of side issues, is told in what seems a leisurely manner, and space is found for adequate illustration of intricate matters. Possibly the author might safely have gone a little further in the way of generalization. He indicates in more than one place (and says on pages 130 and 131) that the economic development of the later middle ages required more highly developed law than was in use. This was clearly the positive cause of the reception of Roman law. He indicates also, in many places, that in the greater part of Europe, during the period under review, there were no governmental agencies capable of developing the new law that was needed, either by legislation or by skilled interpretation. Except in the ecclesiastical courts, the administration of the law, which means its development, was local, for the jurisdiction of the kings' courts was very limited; and, as a result of the attachment of all political functions to the possession of land, the administration of justice in the feudal and the popular courts had fallen into the hands of laymen, "spacious in the possession of dirt" but not necessarily expert in the law which they applied. This situation is clearly indicated in the chapter on Germany (page 110), but it is not made clear that in the eleventh and twelfth centuries the same conditions existed throughout Europe. Greater insistence on these main points would have made it clearer to the reader why, in the first place, there was no immediate reception of Roman law in those parts of Europe that were backward in their economic development, neither in the forest cantons of Switzerland nor in Scandinavia nor in the Slavic countries; and why, in the second place, there was no complete reception of Roman law in those parts of Europe in which, at the critical period, royal courts were taking the place of the feudal and popular courts and formal legislation was becoming possible; witness the independent legal development in Aragon and Castile, in northern France and, above all, in England. Finally, insistence on the courts as the central channels of the whole movement and on their composition and character as the really determinant element in the problem would make it clear why, in the countries which developed governmental courts at too late a period to make possible the development of national law, the appearance of "the learned judiciary" marked the decisive triumph of the law of Justinian, its complete reception as subsidiary law; witness the legal development in southern France, in Germany and in the Netherlands. The revival of the study of Roman law in Italy and in other

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European countries furnished the supply only: the demand was determined by growing economic needs and arrested political development. If any fundamental criticism of Vinogradoff's book is justifiable, it is that, like most other writers on the subject, he has put disproportionate emphasis on the academic study of the Roman law and on the appearance of Romanistic scraps in legal literature.

A few instances may be noted in which the author's expressions seem infelicitous or his statements of questionable accuracy. "Contract accompanied by a wager" (page 17) is not a correct description of the *Wettvertrag*, which derived its binding force from a symbolic pledge or gage. In the case cited on page 18, the *Launegild* seems to be consideration, as the word is used in English law, rather than "compensation." For "provocation" (page 34) appeal would be a better translation. To an English lawyer the nature of the Roman mandate is better suggested by commission than by "order" (page 80). In the text and gloss given on pages 30 and 31 it does not seem to the reviewer that "the idea is the same"; on the contrary, the gloss seems to miss the essential point, namely, that the rights of the person who has dealt with an accredited *procurator* are not affected by any fraud which the latter may have practised against his principal. Justinian's "mixed actions" do not start from obligation and result in claims as to things, as the citation on page 74 suggests: on the contrary, they start from joint rights in things and sometimes give rise to obligations. To say that the separation of the property rights of the Roman father and son was "usually effected by the marriage of the son" (page 79) would be quite misleading if the author had not indicated in a preceding clause how this result was effected; as it is, the words quoted are confusing. In tracing the possible influence of the Roman possessory interdicts upon Anglo-French theories of seizin, Glanville's treatment of the gage of land (page 86) seems hardly in point, since at Roman law the pledgee in possession could use the possessory interdicts. If Glanville, in the author's opinion, was ignorant of this and was misled by general Roman dicta regarding the *de facto* character of possession, his attitude should be made clear. Such criticisms upon a book which covers so wide a field with such ample and varied knowledge would be captious, but for the purpose which evokes them. Regarding the book as one of great value, the reviewer submits his brief list of apparent *errata* for the author's consideration in the preparation of a second edition.

M. S.

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BOOK NOTES

Mr. E. G. Sihler, now professor in the New York University, was the first classical scholar to receive his doctorate from Johns Hopkins University. A veteran in his chosen field, he is known and respected, not only in America but even more in England and on the continent of Europe, for the soundness of his scholarship and for his uncompromising firmness in upholding high standards in education and research. While most other classical philologists of America have devoted themselves to linguistics and to textual criticism and annotation, Professor Sihler, without neglecting these lines of work, has preferably interested himself in the subject-matter of the classics, and especially in institutions and culture. In America precisely this kind of work is needed for the justification of classical studies. His *Annals of Caesar: A Critical Biography with a Survey of the Sources* (New York, G. E. Stechert and Company, 1911; 330 pp.) is the fruit of a mature judgment combined with an exact knowledge of the details of the subject. It will not appeal to the reader who goes to history, as to a novel, for emotional effects. It deals with no theory subjectively imposed upon the facts, as does the treatment of the same subject by Mommsen, Froude and Ferrero. Nor is it a dry enumeration of data. Keeping the sources constantly in view, the author presents connectedly the appropriate facts and suggests judicious interpretations. The reader cannot proceed far without discovering that he is following a safe guide. There is no book in the classical field, dealing with a biographical subject, which gives the reader so fruitful an insight into the workshop of the biographer or better trains him to a love of historical truth for its own sake. The language is always clear, and the book contains many phrases and passages of remarkable force. These substantial qualities are certain to give it endurance. Doubtless the educated public will be glad to learn that the author is preparing a similar life of Cicero.

A new series of volumes to be devoted to the collection of material on the economic history of France has been inaugurated by a work entitled *Memoires et documents pour servir à l'histoire du commerce et de l'industrie en France* (Paris, Hachette et Cie., 1911; 252 pp.). The series is edited by Professor Hayem. The present volume does not consist wholly of documents but includes studies dealing with the industrial situation from the sixteenth century to the eighteenth.

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Among the subjects treated are the woolen industry, strikes and their precursors and shop rules. The volume also includes a study of Mediterranean commerce in the seventeenth century.

A monograph of interest to students of fiscal history is *Le Budget communal de Besançon au début du XVII siècle*, by Marius Pouchenot (Paris, Honoré Champion, 1910; 131 pp.). This pamphlet is only a portion of an economic history which the author proposes to write, but as an illustration of the local finances of the period it is complete as it stands. It enables one to understand the growing dissatisfaction with the whole fiscal system which constituted one of the causes of the Revolution. Many of the items in the budget of expense will be found interesting: *e. g.* 8 livres on behalf of some of the clerical assistants for washing; 150 livres paid to the professor of medicine; 5 livres for a public breakfast; and 100 livres for pens and ink for the city council.

Several volumes have been added to the *Collection des documents inédits sur l'histoire économique de la révolution française* since the series was reviewed in this magazine (vol. xxv, pp. 328–338). One of these, edited by Paul Moulin, completes the presentation of statistics relative to the sale of national property. Another, edited by Fernand Gerbaux and Charles Schmidt, carries the minutes of the committees on agriculture and commerce from February, 1793 (where their third volume ended), to the dissolution of the Convention; the exhaustive index which was to have appeared under the same cover had to be reserved for separate publication in view of the space already occupied by the documents (810 pages). MM. Sée and Lesort present the remaining *cahiers* of the *sénéchaussée* of Rennes in a second volume. Finally, the *cahiers* of the *bailliage* of Bourges have been brought together in a second volume by Alfred Gandilhon. He believes that the parish *cahiers* represent, as a general thing, the views of the peasants themselves. He has found "hardly a trace" of any influence exerted by the philosophic writers of the period. Even when judicial officers, directing the electoral operations in several parishes, imparted to groups of *cahiers* certain common features, each *cahier* still retained a distinct character. It is interesting to notice the complaints, varying in form and substance, which appear to have been included through the influence of the parish priests. They are "expressed frequently in acrimonious terms which denote on the part of the *curés* a lively resentment, not to say a profound hate." All of the four new volumes maintain the high level of scholarship which has marked the series from the beginning.

A further contribution to the history of the French Revolution is

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made by Dr. Roger Picard in a work entitled: *Les Cahiers de 1789 et les classes ouvrières* (Paris, Marcel Rivière et Cie., 1910; 271 pp.). The researches of the author corroborate the statement made by other investigators: that the grievances and petitions of the *cahiers* dealt more largely with agricultural than with commercial and industrial questions. The author points out, however, that there was clearly perceptible in the third estate a tendency to divide into two antagonistic bodies, and he calls attention to some of the complaints which tend to show an exploitation of the industrial workmen. He confesses, however, that these are exceptional. The most characteristic feature of the *cahiers* he finds to be that sentiment of the need of national solidarity which was soon to play so great a rôle in the Revolution.

Students of representative government in general and of the suffrage in particular will find Dr. Adolf Tecklenburg's study of the evolution of the suffrage in France: *Die Entwicklung des Wahlrechts in Frankreich seit 1789* (Tübingen, J. C. Mohr, 1911; xiv, 264 pp.) to be not only a scholarly historical survey of the subject but also a valuable contribution to the theory and practice of representative government. Dr. Tecklenburg opens his volume with a study of the origin and development of the notion of majority rule previous to the French Revolution, examining the organization of the French political system and the writings of French theorists regarding the suffrage and majority rule. He then traces with great detail the development of French institutions since the Revolution, analyzing the speculations of philosophers and men of affairs which bear upon the distribution of representation, the principle of majority rule and the suffrage. The third and concluding part of the volume is a survey of the more recent tendencies in the suffrage and elections in France, including a study of proportional and class representation. He sums up his conclusion in a single sentence: "The exhaustion of the doctrine of simple majority rule in the course of its development, union of the ideas of proportional election and organic (class) representation—that is the result of the evolution of the suffrage in France." Those who fondly imagine that the problem of popular government is settled when representation is distributed according to population and every adult male has a vote, and those who think that representative government is a simple, definite and invariable thing, will do well to study this illuminating work on French political experience and theories.

A topic which has not received as much attention in France as in Germany is that of the journeymen's guilds or fraternities of the later middle ages. Professor G. Des Marez, the accomplished archivist of

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the city of Brussels, devotes an attractive monograph to the study of one of these guilds, that of the Brussels hatters: *Le Compagnonnage des chapeliers bruxellois* (Bruxelles, Librairie Henri Lamertin, 1909; 112 pp.). The author depicts the more or less familiar economic conditions which caused the rise of this journeymen's guild at the close of the sixteenth century and treats with a master hand the main outlines of its development, concluding with an account of its survival at the present day. He calls attention to the fact that the modern factory system has not made its way into the silk-hat industry, because of the necessity of individual work on the part of the laborers. A number of interesting illustrations add to the value of the monograph.

A second edition of Professor Georg Friedrich Knapp's monograph on *Die Landarbeiter in Knechtschaft und Freiheit* (Leipzig, Duncker und Humblot, 1909; 118 pp.) adds to the four essays of the first edition a study on internal colonization which originally appeared in one of his other publications. In its present form the volume constitutes a well-rounded treatment of the history of agricultural labor in Germany.

Two neat volumes have just appeared, devoted to the description of the valley of the Moselle and to the West-German iron industry: *Moselland und westdeutsche Eisenindustrie* (Leipzig, Duncker und Humblot, 1910; 204 and 153 pp.). In connection with the students' tours (*Studienreisen*) which have been organized by the Vereinigung für staatswissenschaftliche Fortbildung in Berlin, and in preparation for the actual excursion, which occupies a week each spring, addresses are given; and these volumes are based upon such addresses, printed at the request of the students. The first volume is very much what one might expect under the circumstances: it consists of eight pleasant historical and descriptive chapters by eight different lecturers on the old Roman and the new German centers of interest in Lorraine. Volume two, however, is quite different. Professor Hermann Schumacher of Bonn seized the opportunity to recast and enlarge his lectures into a history and description of the West-German iron industry; and the little book is as readable as it is informing.

The trend of recent scholarship is to reveal the hundred as the essential judicial and administrative unit of Anglo-Saxon social organization. It is therefore not without value for the history of institutions to have a careful and minute survey of such a district, even if it be at the close of the thirteenth century. *A Suffolk Hundred in 1283* (Cambridge University Press, 1910; xxxiv, 120 pp. and 29 appended schedules), by Mr. Edgar Powell, is, however, a contribution to the economic rather than to the legal side of local history, for the book is

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based upon statistical records describing or enabling the author to describe the land tenures in the hundred of Blackbourne at that date. A good map of the hundred is appended. As a source-book for manorial history this detailed survey is of distinct value.

Two studies in English economic history, for which Dr. W. Cunningham bespeaks a favorable reception, have appeared in the new Girton College Series, which is to present the researches of the graduate students of that college. The first study is by Theodore Keith, on *Commercial Relations of England and Scotland, 1603–1707;* the second is by Audrey Cunningham, on *British Credit in the Last Napoleonic War* (Cambridge University Press, 1910; 210 and 196 pp.). Mr. Keith's book is based on unpublished as well as published material, which is handled with the same care that is shown in the recent publications of the London School of Economics. The economic history of Scotland is so little known—in fact there was so little to know of its earlier phases—that this study of the Stuart period, when the new era was just dawning, is especially welcome. Of wider interest but not so well worked out is the second book, in which Mr. Cunningham endeavors to show that Napoleon's continental system was directed rather against England's credit than against English wares. This thesis makes the Napoleonic statecraft more intelligent and far-seeing than historians have commonly recognized, although the author rightly insists upon the failure of France to realize the stability of English credit. The data which support this latter contention have been gathered from antiquated sources (*e. g.* Martin), and the point is too well established to require developing. The main part of the essay really rests upon the evidence of d'Hauterive and an interesting and seemingly little known pamphlet by Henri Laselle, *Des Finances de l'Angleterre* (1803), which is reprinted in the appendix.

In 1904 Dr. Hermann Levy, then a *Privatdocent*, published a work in German on the origin and decay of large holdings in England. This has now been brought up to date with considerable additions by the author—who has since become professor of economics at the University of Heidelberg—and it appears in English dress under the title: *Large and Small Holdings: A Study of English Agricultural Economics* (Cambridge University Press, 1911; 249 pp.). Dr. Levy traces in a lucid and instructive manner the changes that have occurred in the last two centuries, not only in the agricultural conditions themselves but also in the general attitude of thinkers and statesmen as regards large and small holdings. His distinctive contribution to the subject is his elucidation of the thesis that it is unsafe to make any broad

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generalizations about the profitableness of large or of small holdings, everything depending upon the character of the agricultural products and of the uses to which the soil is put. Incidentally, Dr. Levy devotes considerable space to the most recent results of the small-holdings movement. The book is a scholarly contribution to a subject on which little has been written by professional economists.

Georg Jäger's *Das englische Recht zur Zeit der klassischen Nationalökonomie und seine Umbildung im neunzehnten Jahrhundert* (Leipzig, Duncker und Humblot, 1909; viii, 107 pp.), which forms number 137 of the Schmoller-Sering series of *Staats- und sozialwissenschaftliche Forschungen*, is a study somewhat wider than its title, for it considers the relations not only between English law and economics but also between these and English politics and philosophy. At the close of the eighteenth century all these formed a harmonious and static whole, based on the interests of the landholding class and adapted to perpetuate its power. In the nineteenth century capitalistic interests modified English politics and law and produced in their turn their own philosophical justification. To shape legal theory to suit these interests it was necessary only to stress and develop the individualistic principles which formed an essential part of English law and equity but which had been largely paralyzed by the intimate association of personal with property rights (*Verdinglichung des Rechts*). To the continental European student this entire movement is of direct interest because of the "reception" on the continent of the parliamentary system and the classical political economy. The previous reception of Roman law had made it quite unnecessary to borrow any English private law. "The principles of the Roman law—absolute, individualized property right and freedom of contract—form the juristic presuppositions of the classical political economy." English law, following economic development, had worked out similar principles independently. There is so much good work in this little book that it is a pity that many of its pages, especially those dealing with legal philosophy, are written in so abstract a manner and in so crabbed a style as to make their reading a burden.

The investigations of Mr. G. H. Wood in the statistical history of the cotton industry, which first appeared in the *Journal of the Royal Statistical Society*, have been brought together in a valuable little manual: *The History of Wages in the Cotton Trade during the past Hundred Years* (London, Sherratt and Hughes, 1910; 162 pp.). Although, next to agriculture, the cotton trade has received the most careful study of all British industries and its items are easily reducible

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to general schedules, the changes which have come into the methods of work, the extreme specialization and the differences between various branches of the cotton manufacture demand a high degree of care upon the part of the statistical historian. Mr. Wood's work, the product of ten years' patient study and personal investigation, seems to meet all requirements, and it has the endorsement of Mr. Bowley. It is interesting to find that, after the great reduction in wages which took place during the middle of the nineteenth century, the average wage paid to cotton operatives in 1906 was again practically the same as in 1806, although the relative value was of course different.

In the second volume of *The King's Customs*, by Henry Atton and Henry Hurst Holland (London, Murray, 1910; 506 pp.), the characteristics which were criticized in this periodical a few years ago, in a notice of the first volume, are perhaps slightly less in evidence. This second volume deals with the first half of the nineteenth century. The authors' discovery in the cellars of the King's Warehouse of the plantation papers dealing with colonial customs, from 1814 (the date of the burning of the customs house) to the termination of the British Customs Board's control of colonial revenue, has given them the opportunity of devoting much space to an interesting account of smuggling. The appendix of almost one hundred pages deals very largely with documents relating to that subject.

A résumé of "schemes for the reconstruction of the relation of Great Britain and her colonies, 1754–1867," has been made by Miss E. Arma Smillie, a graduate student in McGill University, and is published under the title: *Historical Origins of Imperial Federation* (Montreal, Mitchell and Wilson, 1910; 61 pp.). Both the title and the explanatory sub-title are too broad: the schemes considered refer exclusively to the colonies in America. The first part of the pamphlet deals with plans of American colonial union prior to 1776; the second with plans for the union of the colonies in British North America down to 1867. Miss Smillie gives a bibliography of the sources accessible in the library of McGill University, in the library of the Dominion Parliament and in the Dominion archives. Her compilation seems to have been made with care and will be found useful.

Not the least deplorable of the consequences of the American Civil War is the apparent necessity for wasting great amounts of time, labor and gray matter in studying the life of John Brown. Dr. Villard's *John Brown* (Boston, Houghton Mifflin Company, 1910; xvi, 738 pp.) tells the sordid tale of the man's career with a minuteness that leaves nothing to be desired. Some material not hitherto used has

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been made available by the author, and he has brought to the writing of the work an admirable historical spirit. It seems almost a pity that his abilities should not have had a more worthy subject on which to exercise themselves. Throughout most of the work John Brown appears just as he was, a shiftless, thriftless, crack-brained person, with but a single redeeming quality, that of great personal courage. The biographer refrains from all effort to excuse Brown's thieving and murderous propensities or to glorify in any way his methods, until, at the very end, the man is brought to prison and the gallows is in sight. Then the historian's self-restraint gives way and a modified form of the long familiar drivel is indulged in. Because John Brown showed the steadiness in the face of death that is common among the worst criminals, and because he wrote letters filled with scriptural quotations and compared himself with Christ, he must be recognized as a martyr. Despite this terminal lapse, Dr. Villard's book will stand as the best thing thus far written on this particular subject, and probably the best that can be written by anyone who is likely to undertake it. It mercifully renders further effort in the same line unnecessary.

Dr. Anna Youngman, in her *Economic Causes of Great Fortunes* (New York, The Bankers Publishing Company, 1909; 185 pp.), makes a study of certain great American fortunes, illustrating the three important stages through which American business and industry have passed: the John Jacob Astor fortune, gained largely from trade and land speculations, representing the pre-corporate régime; the Jay Gould fortune, made in railways, representing the period intervening between the Astor age and our era of great industry; and the group fortunes of the Standard Oil and Morgan men. On the whole, the book is a temperate and well-documented account, in brief compass, of the conditions and methods by which these great fortunes have been built up. The author does not hesitate to expose the objectionable methods employed by specialists in high finance to enrich themselves at the expense of stockholders and the public; but she shows the futility of attempting either to justify or to condemn, on theoretical economic grounds, the making of great fortunes or their makers. She examines the social factors which have entered into the making of these fortunes, and comes to the obvious conclusion that there is no necessary relation between large individual gains and service rendered to the community. Indeed, she believes that it is wholly useless to attempt to establish any relation between the amount of social service, or even the extent of personal ability or activity, and the magnitude of the personal reward. The volume is a modest contribution to American

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economic history, and it is a wholesome corrective to the specious reasoning of the economists who regard themselves as bound to find a moral and scientific justification for the condition in which we find ourselves.

Professor Robert C. Brooks, in his *Corruption in American Politics and Life* (New York, Dodd, Mead and Company, 1910; xv, 309 pp.), has made a practical analysis of the intimate nature and varied forms of corruption in politics, the professions, journalism, education and business. This is the first attempt to make a reasoned survey of all the various manifestations of what is known in popular language as "graft." Mr. Brooks does not believe that the charges of corruption or even the demonstrable corruption in American politics proves that our political morality is lower than that of other great nations; nor does he believe that, considering opportunities and temptations, our political morality is inferior to our business and social morality. With regard to the morals of educated and professional men, our author takes an optimistic view: "Our men of light and leading are sound at heart. . . . And our institutions of higher learning are moulding both the men and the nation of tomorrow into nobler form." Nevertheless, corruption —defined by the author as "the intentional misperformance or neglect of a recognized duty or the unwarranted exercise of power with the motive of gaining some advantage more or less directly personal"—is all too prevalent; and to combat it our moral and legal standards must be raised to a higher level and the laws against offenders, great and small, must be more strictly enforced. The volume will be helpful in clarifying public notions about corruption, and it is a contribution to that newer literature which is pointing "the way out."

A valuable number in the *Staats- und völkerrechtliche Abhandlungen* of Jellinek and Anschütz, which should have been noted earlier, is the comparative study of interpellation by Dr. H. L. Rosegger: *Das parlamentarische Interpellationsrecht* (Leipzig, Duncker und Humblot, 1907; 112 pp.). A general survey, on the basis of political theory, is backed up by a definite study of the working of this device of continental parliamentary procedure, especially in Germany. The book is heavily Teutonic but worth while.

Under the title: *The Spirit of America* (New York, The Macmillan Company, 1910; xv, 276 pp.), Dr. Henry van Dyke prints some of the lectures which he delivered in France on the Hyde foundation in 1908–09. In order to enable the French to see us as we see ourselves he attempts, not to paint a panorama of American life nor to catalogue the items of our civilization, but to disengage and express the feelings

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and tendencies that underlie and shape our institutions. Of the salient traits which he attributes to Americans, three at least will be accepted with little question: self-reliance, energy and keen appreciation of the value of personal development. That we have a stronger or more general "sense of common order" than others seems questionable, until we find that Dr. van Dyke means that we prefer to realize our social aims by voluntary coöperation rather than by legal compulsion. That we have a stronger feeling for "fair play" than is observable in other nations will seem to many untrue. Our author concedes that this sentiment has not controlled our conduct towards Indians, negroes or Chinamen. He justifies his claim, however, by identifying the demand for equality of opportunity, "the square deal," with the demand for uniform application of our constitutional guaranties of liberty, and he consequently finds the supreme expression of "fair play" in the annulment by our courts of unconstitutional legislation. In this as in other matters Dr. van Dyke is faithful to American traditions and interprets with substantial accuracy our national ideals. That he succeeded in making his interpretation intelligible and attractive to many Frenchmen was shown by the large number of hearers drawn to his lectures and by their appearance in a French translation: *Le Génie de l'Amérique*. If, as Mr. Herbert Croly maintains, our ideals are contradictory and inadequate and our satisfaction with them a morbid symptom, and if such optimism as Dr. van Dyke's is likely to aggravate our national auto-intoxication, Mr. Croly's *Promise of American Life* may serve as an antidote. It is perhaps for this reason that the publishers have placed an advertisement of that book at the end of Dr. van Dyke's volume.

In *Letters from China* (Chicago, A. C. McClurg and Company, 1909; xv, 392 pp.), by Sarah Pike Conger (Mrs. E. H. Conger), we have an interesting and readable volume on China and the life of its people. It shows not only keen powers of observation but also unusual breadth of sympathy. Although the author, as is well known, passed through the siege of the legations at Peking, being the wife of the American minister, she betrays no trace whatever of bitterness because of her trying experiences. Of especial value is the account of the empress dowager and of the life of the women of the Celestial Empire. In writing of the empress dowager, Mrs. Conger speaks of her "long life of usefulness," her "steady hand, clear mind and loyal heart," her "marked love for her country and for her people" and her earnest efforts "to uplift the masses." This description by a disinterested and truthful eye-witness contrasts strongly with the portrait-

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ures of a fiendish monster which were daily presented to us in the press in 1900. Mrs. Conger's volume contains many illustrations from photographs and a useful map of Peking; but its chief merit consists in its intimate, faithful and life-like representations of Chinese life and character.

In *La Belgique et le Congo, le passé, le présent et l'avenir*, by M. E. Vandervelde, a Belgian deputy (Paris, Félix Alcan, 1911; 272 pp.), an attempt is made to give a complete account of the administration of the Congo from the beginning down to the present time, including the land system and the labor system, from the economic, the moral and the political point of view. M. Vandervelde has been known as an outspoken critic of the Leopoldian régime and as an active and earnest advocate of the reforms which have lately been instituted. In the prosecution of his studies, he has paid two visits to the Congo; and in the historical part of his work he has made use of various materials not heretofore published. He is a pronounced opponent of the policy of exploitation of colonies by capitalists. He urges a policy having for its immediate object the improvement of the social condition of the natives and for its ultimate end colonial emancipation. In this sense his work has a wider bearing than its title indicates and possesses an interest for all those who are concerned with questions of colonial administration.

The translation by J. Chamard into French of the Italian work on toleration by Luigi Luzzati, under the title: *Liberté de conscience et liberté de science: Études d'histoire constitutionelle* (Paris, V. Giard and E. Brière, 1910; 453 pp.), is not an event of great importance in the history of thought. The book is more imposing in its title than in its contents, which consist of essays and addresses, historical, philosophical and constitutional, thrown together in a miscellany which has no suggestion of plan or method. Signor Luzzati is, of course, always eloquent; but his book would not suffer if it were less inclusive and more coherent.

Professor Weulersse, author of the excellent work on the Physiocrats which was noticed in a recent number of this journal, has supplemented his history by a monograph devoted to the economic manuscripts of Quesnay and Mirabeau: *Les Manuscrits économiques de François Quesnay et du marquis de Mirabeau aux Archives Nationales: Inventaire, extraits et notes* (Paris, Geuthner, 1910; 150 pp.). Weulersse has made a careful search in the French archives and has collected all the material, even to the smallest marginal notes, that was written by Quesnay. In the case of Mirabeau he has omitted certain

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larger manuscripts which are to be published before long by the French review devoted to the history of economic doctrines. An admirable inventory and some judicious prefatory notes enhance the value of the volume.

The two latest volumes in the collection of reprints of French economists and social reformers are Morelly's *Code de la nature*, with a preface by Professor Edouard Dolléans, and Herbert's *Essai sur la police générale des grains*, edited by Professor Edgard Depitre (Paris, Geuthner, 1910; xxxi, 119, and xliii, 166 pp.). The introductions are quite up to the level of those found in the preceding numbers of this valuable series.

In a huge volume of over five hundred pages, Dr. Léopold Leseine gives us the first instalment of an *Introduction générale à l'étude de l'économie politique* (Paris, Félix Alcan, 1910; 536 pp.). Before taking up the subject-matter itself, the author proposes to study what is actually meant by an economic law; and thus the entire volume is devoted to an investigation of what Cairnes has taught us to call "the character and logical method of political economy." It cannot be said that the author, with all his ingenuity, adds much to the discussions already to be found in English, unless it be his distinction between imperative art and normative art in economics and his further differentiation of normative art into absolute, conditional and historical normative art. As a study in scientific classification, the book is entirely too long.

Professor William Smart has published a second edition of his well known *Introduction to the Theory of Value* (London and New York, The Macmillan Company, 1910; 104 pp.), which differs from the original edition only in the addition of an appendix of twelve pages, summing up succinctly the chief points of the marginal-utility theory of value and emphasizing the fact that it represents the demand side of the problem.

Franklin Escher, editor of *Investments* and a writer of reputation on foreign exchange, has published a little book on the *Elements of Foreign Exchange* (New York, The Bankers Publishing Company, 1910; viii, 160 pp.). It is an elementary treatise showing the origin of the supply of bills of exchange and the demand for them, explaining the different kinds of bills and their purposes as well as the business of foreign exchange and its great service to commerce. It is a good book for the general reader and for the student who wishes a simple and clear introductory text.

Roger W. Babson, vice-president of the Gloucester Safe Deposit and

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Trust Company, is a business man who has become fairly well known as a writer on financial topics, especially on financial statistics. He has recently published a book called: *Business Barometers used in the Accumulation of Money* (Wellesley Hills, Massachusetts, Babson's Compiling Offices, 1911; 382 pp.). In it he gives an account of prices, stock-market operations *etc.*, which he considers of importance in judging the probable trend of business and of prices in the future. The book has a large number of statistical tables and diagrams and is intended as a guide for business men and investors.

The thrift of the French peasant has done much to put France in the enviable position of lender to the world. A comparative treatment by a French writer of the savings institutions of France, of the other European countries and of the United States cannot fail to be of interest and value. Professor F. Lepelletier, in his *Les Caisses d'épargne* (Paris, Victor Lecoffre, 1911; 243 pp.), gives such an account. Naturally the institutions of France receive more attention than do those of the other countries, but enough information is given in each case to permit intelligent comparison. What seems to be of especial interest to Professor Lepelletier concerning saving institutions in the United States is the fact that here private initiative plays so much more of a rôle than abroad.

Mr. Frederick L. Hoffman, who is well known as a prolific writer on statistical subjects, has recently published *Insurance Science and Economics: A Practical Discussion of Present Day Problems of Administration, Methods and Results* (Chicago and New York, The Spectator Company, 1911; 366 pp.). Mr. Hoffman attempts to deal especially with the economic basis of insurance and quotes quite largely from recent contributions of economic students. He has, however, many comments of his own and gives a very readable account of the present state of the problem. A large portion of the work is devoted to insurance taxation, and here Mr. Hoffman has no difficulty in showing that American methods are rather primitive and that far more satisfactory treatment is accorded to insurance companies abroad.

The problem of the legal regulation of joint-stock corporations is one of equal interest to the business man, the economist and the lawyer. In *Les Sociétés par actions: La Reforme* (Paris, Félix Alcan, 1911; xi, 332 pp.), Dr. Réné Nouel of the Paris bar gives, first, a lucid and interesting sketch of the development of the French law on this subject from 1807, when Napoleon's commercial code was published, to 1909. He then discusses the points at which the existing legislation is still unsatisfactory. In his opinion its chief defects are: (1) inadequate

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verification of capitalization values; (2) imperfect sanctions for the rules governing the establishment of stock corporations; (3) ineffective control of their administration; and (4) the ease with which the French law is evaded by incorporation in a foreign country. As regards the second point, he remarks that the civil result of illegal establishment, nullity, is often useless and sometimes harmful, while the penal actions strike indiscriminately those who have acted in good faith and those whose bad faith is demonstrable (page 187). The remainder (which is nearly half) of the volume the author devotes to analysis and criticism of the latest reform bill introduced by the government and to his own recommendations. It is interesting to note that in Dr. Nouel's judgment the chief hindrance to satisfactory legislation is the adherence of the law-makers to general economic and political theories. Each legislator is either for or against state intervention and insists that the solution of every problem must be sought along the line of his theory. In a very readable introduction Senator Pierre Baudin echoes this complaint, denouncing "l'esprit de système" and "l'application intransigeante des principes." Are the prophets coming into the camp of Saul?

Railway literature has recently been enriched by three volumes of varying degrees of merit. Mr. George A. Rankin's *An American Transportation System: A Criticism of the Past and the Present and a Plan for the Future* (New York, Putnams, 1909; 464 pp.) is a prolix endeavor to set forth a solution of the railway problem on the basis of uniformity of charges, formulating the demand that "the aggregate charge for carrying the same weight of the same kind of freight shall be the same for equal distances." Mr. Ray Morris, former managing editor of the *Railway Age Gazette*, treats a subject with which he has long been familiar in *Railroad Administration* (New York, Appleton, 1910; 309 pp.). His book will serve as a useful supplement to the ordinary works on the relation of railways to the public. Special attention is to be called to his discussion of divisional *versus* departmental organization and to his study of the financial organization of railways. A problem of the perhaps not very remote future is dealt with by Mr. Carl S. Vrooman in *American Railway Problems in the Light of European Experience, or Government Regulation versus Government Operation of Railways* (Oxford University Press, 1910; 376 pp.). Mr. Vrooman is well aware of the dangers in over-regulation of private railways by the government and in premature attempts at railway nationalization; but he is a firm believer in the ultimate necessity of the assumption by the state of all the railways, and he paints the advantages of government operation in high colors.

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That he both minimizes the dangers of, and exaggerates the demand for, government operation in the United States may be conceded. But his broad generalizations as to the possibilities of future development are instructive and not by any means baseless.

Number 22 of the University of Pennsylvania Series in Political Economy and Public Law is the *Economic History of the Anthracite-Tidewater Canals*, by Chester Lloyd Jones (Philadelphia, 1908; 181 pp.). The monograph is a plain, unvarnished account of the rôle that has been played by the canals that tap the coal districts. The author sees no future for the Morris Canal; but he thinks that the Lehigh, the Delaware and Hudson and the Schuylkill canals may still have a future, provided that modern engineering improvements shall make their operation so economical as to enable them to supplement railways in the carriage of low-class freight.

Mr. George G. Chisholm's standard *Handbook of Commercial Geography* has appeared in a revised seventh edition (London, Longmans, Green and Company, 1908; 660 pp. with maps). The deserved popularity of this work, indispensable to students in its field, is evidenced by its repeated republication. The most important addition is a new chapter on trade routes, with accompanying maps showing railway and ocean lines. Figures are brought down to date, and sundry minor additions are made. Numerous maps, diagrams and statistical tables add to the value of the book for the student.

Widely different in purpose and scope, though similar in title, is *Physical and Commercial Geography*, by Herbert Ernest Gregory, Albert Galloway Keller and Avard Longley Bishop (Boston, Ginn and Company, n. d.; viii, 469 pp.). This book is essentially a study, and an excellent one, of the influence of physical environment on economic activity, as shown by commercial relations. Accordingly, part one treats of physical geography pure and simple; part two deals with the adaptation of man to natural conditions, indicating in interesting and suggestive fashion the dependence of commerce and civilization on the environment; part three considers the geography of trade, dealing only with typical products. Preliminary study of a work of this kind would be a valuable preparation for the study of economics and politics.

In some respects the most successful volume of its kind that has yet appeared is Edward Van Dyke Robinson's *Commercial Geography* (Chicago, Rand, McNally and Company, n. d. [1910]; 455, xlviii pp.). The author conceives of commercial geography as a study of the geographic division of labor, and he has contrived to put into small compass an astonishingly large and well-arranged mass of interest-

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ing information. Special attention should be called to the numerous maps, large and small, of which there are almost one hundred. The book will be found useful to the student and attractive to the general reader.

The Imperial Organization of Trade, by Geoffrey Drage (London, Smith, Elder and Company, 1911; xviii, 374 pp.), is an attempt to state for discussion the whole trade problem confronting England at the present time. Its preparation was hastened in order to have it ready before the Colonial Conference of 1911. It contains chapters on free trade, imperial preference, retaliation, tariff reform and general tendencies in the United Kingdom. The author's conclusions are, on the whole, unfavorable to the particular contentions of Mr. Chamberlain, but he is no less dissatisfied with the stand-pat free-trade policy. The book contains a considerable mass of useful though largely familiar data.

Omit the word "facts," and the title of Sir Guilford Molesworth's *Economic and Fiscal Facts and Fallacies* (London and New York, Longmans, Green and Company, 1909; xii, 292 pp.), becomes rigorously descriptive. The only material outfit required for writing such a book is a pair of scissors, a pastepot and a pitchfork as a collating instrument, while unyielding prejudices and invincible ignorance constitute all the mental equipment required. The British tariff-reform movement may well pray to be delivered from such friends.

In the course of the last few years not a few books have appeared devoted to a study of the tax systems in single American states, such as, notably, Eastman's work on Pennsylvania and Judson's on Missouri. Most of these studies have been made by lawyers. It has been reserved for Professor John E. Brindley, of the Iowa State College of Agriculture and Mechanic Arts, to show what a different sort of work can be done by a professional economist. His two large volumes on the *History of Taxation in Iowa* (Iowa City, State Historical Society, 1911; 476, 493 pp.) are published in the Iowa Economic History Series edited by Professor Shambaugh. Not only in form and in appearance, but also in content, they may be characterized as the best study of taxation that has yet been made for any one of our American states. Professor Brindley is in touch with the best modern thought on the general subject, and he brings to his treatment of the specific Iowa problems a thorough knowledge of the progress that has been made elsewhere. In consequence his work is far more than a study of the fiscal situation in Iowa; it contains real contributions to the discussions of many of the questions of tax reform now agitated throughout

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the country. Mr. Brindley is a strong believer in centralization as a means of obtaining better administrative methods. Notwithstanding its undue length, the work will be found as interesting as it is valuable.

Mr. Hugh Bancroft, of the Massachusetts Bar, has written a series of articles, which were originally printed in the Boston *News Bureau*, on inheritance taxes in our American states, with special reference to the complications of double taxation. He has now collected these in a volume entitled: *Inheritance Taxes for Investors: Some Practical Notes on the Inheritance Tax Laws of the States of the United States, with particular reference to their application to Non-resident Investors* (Boston News Bureau, 1911; 139 pp.). The volume forms a handy manual of American legislation on this subject, and it includes some of the leading cases. The author is preparing a larger work dealing more fully with the whole subject.

Recent agitations, leading in some cases to legislation, lend especial interest to two publications on the unearned-increment tax, the one by H. Weissenborn, mayor of Halberstadt, entitled: *Die Besteuerung nach dem Wertzuwachs, insbesondere die direkte Wertzuwachssteuer* (Berlin, Julius Springer, 1910; 156 pp.), the other by Dr. Steiger, of Bern, entitled: *Die Wertzuwachssteuer (Besteuerung der Liegenschaftsgewinne) in Deutschland und in der Schweiz* (Zürich, Orell Füssli, 1910; 56 pp.). Mayor Weissenborn's book was published before the recent adoption by Germany of the scheme for an imperial tax on the unearned increment, and it takes strong ground against such an imperial tax. Incidentally, it makes a distinction between what the author calls a direct and an indirect tax on unearned increment. Dr. Steiger's pamphlet is valuable in that it gives in detail the latest facts regarding this class of taxes in the Swiss cantons and cities.

The Swiss experiments in progressive taxation have long attracted the attention of students. Twenty years ago they were explained in the German work of Schanz and, a decade later, in the French work of Cérenville. Their study is now brought up to date in a volume by Peter Hans Weiler: *Direkte Staats- und Gemeindesteuern in der Schweiz: Die heutige Belastung physischer Personen durch direkte Staats- und Gemeindesteuern in der Schweiz, mit besonderer Berücksichtigung der Progression* (Zürich, Orell Füssli, 1910; 377 pp.). So far as the facts are concerned, Dr. Weiler's volume leaves nothing to be desired, for it goes into the smallest details for each canton; but it gives nothing in the way of broad synthesis or careful criticism.

The growing complexity of modern fiscal systems increases the frequency of double taxation, not only between local divisions of a state

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and the state, and between states in a federal union and the union, but also between nations. Two recent works grapple with this problem: the one by Julius Fischer, *Die Doppelbesteuerung in Staat und Gemeinde: Eine Untersuchung über die Besteuerung der Bundesverwandten und Ausländer, sowie der Forensen, nach den direkten Staats- und Gemeindesteuergesetzen Deutschlands und der Schweiz* (Berlin, Carl Heymann, 1909; 124 pp.); the other by M. J. Brincour, *Des Doubles Impositions fiscales au point de vue national et au point de vue international* (Louvain, Van Linthout, 1910; 50 pp.). Dr. Fischer treats primarily of interstate and interlocal double taxation in Germany and in Switzerland respectively, and attempts to do for those countries what Dr. Francis Walker did some years ago for the United States. M. Brincour deals less with the multiplicity of facts and of legal decisions than with the underlying principles, from the point of view of fiscal science as well as from that of international law.

The high rates that have recently been introduced into the inheritance taxes of European countries have led to concerted efforts toward tax evasion. Of one of the methods of evasion M. René Depuichault publishes an interesting study: *La Fraude successorale par le procédé du compte-joint* (Paris, Félix Alcan, 1911; 239 pp.). M. Depuichault calls attention to the various forms of joint account and describes, in an engaging manner, how both England and France by means of international conventions have been able to check this form of evasion. After a careful study of the situation in other European states, he finds that Germany is the only country where such accounts may still be opened in the names of foreigners; and he ascribes a not inconsiderable part of the recent prosperity of the German banks to the fact that they have become the depositories of so many securities from all the rest of Europe. In view of the controversy over the very high rates of the late New York inheritance-tax law, this study of tax evasion is most interesting and its perusal may be of advantage to our legislators.

The thesis of Olive Schreiner's *Women and Labor* (New York, Frederick A. Stokes Company, 1911; 299 pp.) is by no means new, but the manner of its presentation is original and striking. The author argues that the progress of the past century has produced psychological changes in men and women which necessitate readjustment in their economic and social ties, and she pleads for complete liberty for women as far as the selection of their activities is concerned. Their economic independence, she holds, is essential to the advancement of mankind. She is particularly bitter in her condemnation of female parasitism because, in her opinion, it spreads enervation and decay throughout the

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race. In her mind, therefore, the woman's movement of to-day is justified as a means of safeguarding children under a new and more complex order of life. It will not result in more antagonism between the sexes, because it will be accompanied by the development of a "new man." "If new ideals, new moral conceptions, new methods of action, are found permeating the minds of women of one generation, they will reappear in the ideals, moral conceptions and methods of action of men thirty years hence." The suffrage, from this standpoint, is claimed for women as an instrument for social use, not as a natural right. It is not often that one finds an argument put in such effective literary form. Those who believe that the woman movement is a passing fad and has no firm foundation in the economic facts of our time will do well to read this eloquent plea.

Students of present-day France are familiar with the collection of socialistic pamphlets known formerly as the *Bibliothèque du mouvement socialiste* and continued as the *Bibliothèque du mouvement prolétarien* (Paris, Marcel Rivière et Cie.; each 60 pp.). Numbers nine and ten of this series: *Courses du travail et la C. G. T.* by Paul Delesalle and *Voyage révolutionnaire* by V. Griffuelhes are informing surveys of the situation as seen from within. Mr. Griffuelhes in particular affords the novel spectacle of a propagandist workman who takes a psychological interest in the reactions of the people with whom he has to deal. The whole series is to be commended.

The subject of money is one that causes the socialists considerable difficulty. There is no general agreement among them as to what should be employed as a medium of exchange in the proposed socialistic state. Mr. J. Theodore Harris, in a booklet entitled: *An Example of Commercial Currency* (London, P. S. King and Son, 1911; xiv, 62 pp.), describes an experiment that was made in the island of Guernsey with the issue of paper money for the purpose of building a market house. Evidently, although he does not say so, Mr. Harris considers the Guernsey variety of paper money a proper circulating medium for a socialistic society. In an admirable preface, however, Sidney Webb suggests all the difficulties that would occur to the unsympathetic critic. With the preface, the little book is one that will be of value to students of money. It seems to have been carefully prepared and it is well written.

Prize-essay contests do not normally yield what may be deservedly called scientific literature. The Hart, Schaffner and Marx contest, however, has proved a notable exception in this particular. One of the best of the competing essays thus far published is by Mr. O. D.

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Skelton, professor of political science at Queen's University, Kingston, Canada. It bears the title: *Socialism: A Critical Analysis* (Boston and New York, Houghton Mifflin and Company, 1911; ix, 329 pp.), and it won the first prize in the 1908 competition. Professor Skelton reviews and criticizes the socialist indictment of modern society, and he gives a very satisfactory analysis and criticism of the Marxian philosophy. Criticizing the position that Professor Simkhovitch has taken in this particular, he emphasizes strongly the dependence of Marx's whole system on his theory of value. The last two chapters in the essay deal with the modern practical movement. The general reader as well as the more exacting student will find the book clear and interesting. It has style as well as substance.

The object of the volume entitled *La Vie internationale* (Paris, J. Gabalda et Cie., 1911; 187 pp.), by Vicomte Combes de Lestrade, is to show how nations have, in their relations one with another, gradually passed from the stage of the mere exchange of material and intellectual productions to that of collaboration towards certain definite ends. Such collaboration involves association and the exercise of an activity which is international rather than national. As examples, we have the international postal union, arrangements for extradition, treaties for the protection of literary property and conventions for the regulation or limitation of conflicts of law. In the Permanent Court of The Hague he does not perceive a new form of international life, especially as the parties to it have limited the scope of its operation by recent treaties, in which they exclude from arbitration not only independence and "vital interests" but also questions of "honor." Nor does the author look forward to the extinction of national life as the result of international activities. While the latter tend to render the former less intense, yet he thinks that nations will instinctively reassert their individuality and thus preserve an equilibrium between the two forces.

Les Grands Traités politiques (Paris, Félix Alcan, 1911; xi, 570 pp.), by Mr. Pierre Albin, purports to contain a collection of the principal diplomatic acts from 1815 down to the present time. It is divided into six parts, relating respectively to western and northern Europe, to eastern Europe, to Africa, to Asia, to America and Oceania and to international arbitration. These titles indicate the classification. It is obvious that, in the attempt to present in a volume of comparatively small compass the text of the more important treaties during the past hundred years, a large freedom of selection must be exercised, and also a large freedom of abridgment, in order that documents which cannot be textually reproduced may not be passed over alto-

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gether. M. Albin's plan has been to accord most prominence to documents which still retain an interest not wholly or chiefly historical. For instance, he gives a compact sketch or summary of the Congress of Vienna treaties, but textually reproduces only the declaration of the neutrality of Switzerland, the regulations for the free navigation of international streams and the rules regulating diplomatic precedence. On the other hand, he presents *in extenso* the fundamental treaties relating to the formation of the German Empire and the kingdom of Italy, the solution of the problems growing out of the Moroccan question, the adjustment of affairs in the Orient and the arrangements in China, the Congo and Abyssinia. Nearly a hundred treaties are thus given, with notes and helpful comments. The volume has a preface by M. Maurice Herbette, of the French Foreign Office; and at the end there are analytical, alphabetical and chronological tables. M. Herbette is justified in his opinion that the book affords ample proofs of patient research and conscientious labor.

In *International Arbitral Law and Procedure* (Boston and London, Ginn and Company, 1910; xix, 352 pp.), Mr. Jackson H. Ralston, of the Washington, D. C., bar, who was American agent in the Pious Fund case and afterwards umpire of the Italian-Venezuelan Claims Commission, has undertaken to give a résumé of the decisions of international commissions as well as of their procedure and practice, chiefly as found in Moore's *History and Digest of International Arbitrations* and in his own report upon the mixed commissions which sat in Venzuela in 1903. The title of the volume may tend to create the impression, as do certain passages in the preface, that the proceedings of international commissions or boards of arbitration have given rise to a special body of rules. This is undoubtedly true with regard to their practice and procedure; in deciding questions of law, however, they have usually professed to be guided, in the absence of special treaty stipulations to the contrary, by the recognized principles of the law of nations, where such principles have been authoritatively ascertained. To this extent "arbitral law" represents merely an effort to expound general international law. It is, however, a fact, as Mr. Ralston points out, that in certain classes of cases, such as those growing out of the violation of contracts which contain clauses designed to exclude diplomatic intervention, the tribunals have been obliged to formulate their conclusions without material assistance from the writers of treatises, who, in their attention to each other's utterances, have failed to keep pace with the progress of international discussions. Mr. Ralston's volume may be regarded as a useful compendium. Its plan

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is to summarize, not to criticize, the materials elsewhere more fully presented. He divides his work into sixteen chapters, and he gives two appendices containing, respectively, the rules of the Department of State concerning the presentation of claims against foreign governments and The Hague Convention of 1907 for the pacific settlement of international disputes.

The New International Year Book (New York, Dodd, Mead and Company, 1911; 837 pp.), is the successor, with a slight change of title, of the *International Year Book* which the same publishers have issued since 1907, and is thus the fourth in the series. Under the able editorial direction of Professor Frank Moore Colby this work of reference has been growing more and more useful, and the latest volume easily maintains the reputation that the series has made for itself.

There is room and a distinct field of usefulness for such a publication as *The American Year Book* (New York, D. Appleton & Company, 1911; xx, 867 pp.), which appears under the editorship of Dr. S. N. D. North. The publishers announce that the plan of the volume has been established after conference with members of national learned societies, acting officially and unofficially and organized as a supervisory board with Professor Albert Bushnell Hart as chairman of the executive committee. Although the volume includes a review of geology, chemistry, physics, medicine, engineering, art, literature and other sciences and interests, its major portion (555 pages) is given to what may be properly called politics and government, divided under the following heads: comparative statistics; history of law, government and administration; functions of government; economic and social questions; and industry and occupations. The preparation of the several divisions is committed to the care of specialists. For example, Professor Fairlie writes voluminously on state and county government; Mr. Clinton Rogers Woodruff reviews municipal government; Professor H. B. Gardiner writes on public finance and banking; Professor Henry W. Farnam surveys labor and labor legislation; Professor F. M. Burdick has charge of law and jurisprudence; and Dr. A. H. Holcombe summarizes popular government and current politics. On the whole, the volume is well planned and executed. To scholars interested in foreign politics the section on foreign governments and dependencies will seem very meager; but the editor may rightly maintain that such readers should consult European manuals. It is to be hoped that this volume will secure sufficient support to warrant its continuation and steady improvement, for it promises to be a welcome guide through the bewildering changes in American government and politics.

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